17-162

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 146.

THE INHABITANTS OF THE TOWNSHIP OF MONTCLAIR, IN THE COUNTY OF ESSEX, PLAINTIFFS IN ERROR,

vs.

CHARLES DANA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED NOVEMBER 19, 1879.

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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	1
Judgment record	4	2
Declaration No. 1	5	2
Plea	12	10
Declaration No. 2	13	11
Plea	20	19
Declaration No. 3	21	20
Plea	28	28
Declaration No. 4	29	29
Plea	39	43
Declaration No. 5	40	43
Plea	47	53
Declaration No. 6	48	53
Plea	58	67
Declaration No. 7	59	68
Plea	75	92
Order consolidating causes	77	93
Trial, verdict, and judgment	78	93
Bill of exceptions	80	94
Act to incorporate the Montclair Railroad Company	81	94
Act to incorporate the township of Montclair	90	97
Act to authorize certain townships, &c., to issue bonds and to take bonds of the Montclair Railroad Company	98	100
Act supplemental to act to authorize certaintownships to issue bonds, &c.	110	101
TESTIMONY.		
John J. Terry	111	104
William F. Redmond	150	121

	Original.	Print.
Delos E. Culver	160	124
Julius H. Pratt	161	124
Mason Loomis	164	125
William O. McDowell	167	126
Walter S. Spalding	169	127
Cortlandt Parker	172	128
Anthony Q. Keasbey	177	130
David A. Depue	182	132
Anthony Q. Keasbey, continued	194	136
William A. Smith	204	140
Henry T. Dusenberry	206	141
Hiram B. Littell	213	144
John J. Terry, recalled	308	178
James W. Young	316	181
Arzy E. Van Gieson	330	180
Jared E. Harrison	347	192
Zenas S. Crane	389	206
Defendant's requests	396	208
Judge's charge	407	211
Assignment of errors	413	213
Clerk's certificate	433	219

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of New Jersey, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Charles Dana and The Inhabitants of the Township of Montclair, in the County of Essex, a manifest error hath happened, to the great damage of the said The Inhabitants of the Township of Montclair, in the County of Essex, as by their complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday in October next in said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court
2 may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the first day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] S. D. OLIPHANT, *Clerk.*

(Indorsed:) United States Supreme Court. The Inhabitants of the Township of Montclair, in the County of Essex, pl't'ffs in error, vs. Charles Dana, def't in error. In debt. Writ of error to the circuit court for the district of New Jersey. Ret'ble Oct. term, 1879. Thomas N. McCarter, att'y. Filed September 1, 1879. S. D. Oliphant, clerk.

3 UNITED STATES OF AMERICA, *ss:*

To Charles Dana, greeting:

[L. S.] You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of New Jersey, wherein The Inhabitants of the Township of Montclair, in the County of Essex, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States this first day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

JNO. T. NIXON,
District Judge.

Due and legal service of the within writ is hereby acknowledged.

BARKER GUMMERE,
Att'y of Charles Dana.

4 United States circuit court, district of New Jersey.

CHARLES DANA *vs.* THE INHABITANTS OF THE TOWNSHIP OF Montclair, in the County of Essex.	In debt. Consolidated suits. Judgment on verdict.

Barker Gummere, attorney.

As yet of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

JOHN T. NIXON, ESQUIRE,
Judge.

Witness:
S. D. OLIPHANT, *Clerk.*

5 No. 1.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Montclair, in the County of Essex, who are citizens of the State of New Jersey, incorporated by that name by the said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, the plaintiff therein, of a plea that they render to him the sum of five thousand dollars, which they owe to and unjustly detain from him, as is said. And therefore the said plaintiff, by Barker Gummere, his attorney, complains.

6 For that whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities, to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex, and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act,

make their bond, bearing date the day and year last aforesaid, numbered twenty, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-four, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the first days of May and November, in each and every year until maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupons at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond, and of said interest coupons, and that he is still the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bonds and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of eleven hundred and forty dollars, parcel of the sum above demanded.

7 And whereas in the months of August and September, A. D.

eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder hereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another

of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

8 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum. of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township, and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered

twenty-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November, in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof, the said defendants became liable to pay to the said plaintiff, the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond

and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

9 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent in writing that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn, as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and ten, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-three, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually, on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex; and there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first

day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond, and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified, by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty , parcel of the sum above demanded.

10 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate

and landed property of the township of Montclair, in the county of Essex, and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and fifteen, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-four, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office," were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May,

eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof, the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

11 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of eight hundred and eighty dollars for interest for the forbearance by the plaintiff, at the defendants' request, of money due and owing from the defendants to the plaintiff, and to be paid by the defendants to the plaintiff upon request, whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of eight hundred and eighty dollars, residue of the sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuse so to do, to the damage of the plaintiff of one thousand dollars, and therefore he brings suit, &c.

BARKER GUMMERE,
Att'y of Pl'ff.

12 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say as to the first, second, third, fourth, and fifth counts in said declaration, that the said supposed writings obligatory are not their deeds; and of this they put themselves upon the country, &c.

And the said defendants, for a further plea in this behalf, by leave of the court here first had and obtained, according to the form of the statutes in such case made and provided, come and defend the wrong and injury, when, &c., and say as to the sixth count in said declaration that they do not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

13 No. 2.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

"The Inhabitants of the Township of Montclair, in the County of Essex," who are citizens of the State of New Jersey, incorporated by that name by said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, the plaintiff therein, of a plea that they render to him the sum of five thousand dollars, which they owe to and unjustly detain from him, as is said. And thereupon said plaintiff, by Barker Gummere, his attorney, complains:

14 For that whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township, and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-three, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National

State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office," were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff, in fact, says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the

said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars parcel of the sum above demanded.

15 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-four, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office," were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof,

on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof, the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

16 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex, and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid

act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-five, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof, the said defendants became liable to pay to the said

plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

17 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and twenty-nine, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National

State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

18 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize

certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and thirty, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of

said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified, by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof, and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do, by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

19 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of eight hundred and ten dollars for interest for the forbearance by the plaintiff, at the defendants' request, of money due and owing from the defendants to the plaintiff, and to be paid by the defendants to the plaintiff upon request, whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of eight hundred and ten dollars, residue of the sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuse so to do, to the damage of the plaintiff of one thousand dollars, and therefore he brings suit, &c.

BARKER GUMMERE,
Att'y of Pl'tff.

20 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say as to the first, second, third, fourth, and fifth counts in said declaration, that the

said supposed writings obligatory are not their deeds; and of this they put themselves upon the country, &c.

And the said defendants, for a further plea in this behalf, by leave of the court here first had and obtained, according to the form of the statutes in such case made and provided, come and defend the wrong and injury, when, &c., and say as to the sixth count in said declaration that they do not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

21 No. 3.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Montclair, in the County of Essex, who are citizens of the State of New Jersey, incorporated by that name by said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, the plaintiff therein, of a plea that they render to him the sum of five thousand dollars which they owe to and unjustly detain from him, as is said. And thereupon the said plaintiff, by Barker Gummere, his attorney, complains:

22 For that whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-six, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one

thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff,

but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

23 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township, and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Little, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-seven, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest cou-

pons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified, by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified, have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do, by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

24 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing as agents or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly

appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-eight, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof, the said defendants, became liable

to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

25 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning or representing, as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and thirty-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-six, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond, and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on

said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of four hundred and eighty dollars, parcel of the sum above demanded.

26 And whereas in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain per-

sons owning or representing as agent or president at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and thirty-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-six, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the

holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says, that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

27 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of eight hundred and ten dollars for interest for the forbearance by the plaintiff, at the defendants' request, of money due and owing from the defendants to the plaintiff, and to be paid by the defendants to the plaintiff upon request; whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of eight hundred and ten dollars residue of the sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuse so to do, to the damage of the plaintiff of one thousand dollars; and therefore he brings suit, &c.

BARKER GUMMERE,
Att'y of Pl'ff.

28 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say, as to the first, second, third, fourth, and fifth counts in said declaration, that the said

supposed writings obligatory are not their deeds; and of this they put themselves upon the country, &c.

And the said defendants, for a further plea in this behalf, by leave of the court here first had and obtained according to the form of the statutes in such case made and provided, come and defend the wrong and injury, when, &c., and say, as to the sixth count in said declaration, that they do not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

29 No. 4.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Montclair, in the County of Essex who are citizens of the State of New Jersey, incorporated by that name by the said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, the plaintiff therein, of a plea that they render to him the sum of five thousand dollars, which they owe to and unjustly detain from him, as is said; and thereupon the said plaintiff, by Barker Gummere, his attorney, complains:

30 For that whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered twenty-nine, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they,

the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond And the plaintiff in in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof,

yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

31 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered thirty, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-five, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county court clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond;

and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons; and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and ten dollars, parcel of the sum above demanded.

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son, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and fifty-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-eight, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five-dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest

on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

33 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and fifty-three, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-eight, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and

surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said sev-

eral sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

34 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond bearing date the day and year last aforesaid, numbered one hundred and fifty-four, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-eight, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the

first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissionors of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and fifty-five, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-eight, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was, by said bond, then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May,

eighteeen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof, the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

36 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex, and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex, and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid

act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-eight, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and

seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified, by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

37 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of

the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof, the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but

have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

38 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of nine hundred dollars for interest for the forbearance by the plaintiff, at the defendants' request, of money due and owing from the defendants to the plaintiff, and to be paid by the defendants to the plaintiff upon request, whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of nine hundred dollars residue of the sum above demanded, yet the said defendants, although often requested so to do, have not, as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuse so to do, to the damage of the plaintiff of one thousand dollars; and therefore he brings suit, &c.

PARKER GUMMERE,
Att'y of Pl'ff.

39 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say, as to the first, second, third, fourth, fifth, sixth, seventh, and eighth counts in said declaration, that the said supposed writings obligatory are not their deeds; and of this they put themselves upon the country, &c. And the said defendants, for a further plea in this behalf, by leave of the court, here first had and obtained according to the form of the statute in such case made and provided, come and defend the wrong and injury, when, &c., and say, as to the ninth count in said declaration, that they do not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

40 No. 5.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Montclair, in the County of Essex, who are citizens of the State of New Jersey, incorporated by that name by the said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, and plaintiff therein, of a plea that they render to him the sum of five thousand dollars, which they owe to and unjustly detain from him, as is said; and thereupon the said plaintiff, by Barker Gummere, his attorney, complains:

41 For that whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of Feb-

ruary, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered thirty-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-six, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would

pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and eighty dollars, parcel of the sum above demanded.

42 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seven-

teenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered thirty-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-six, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would

pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof, and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and eighty dollars, parcel of the sum above demanded.

43 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered thirty-eight, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-six, and also the

interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bonds and coupons respect-

ively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and eighty dollars, parcel of the sum above demanded.

44 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to

said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

45 And whereas, in the months of August and September, A. D.

eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-three, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest

coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

46 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of six hundred dollars for interest, for the forbearance by the plaintiff at the defendant's request, of money due and owing from the defendants to the plaintiff and to be paid by the defendants to the plaintiff upon request, whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of six hundred dollars, residue of the sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuse so to do, to the damage of the plaintiff of one thousand dollars; and therefore he brings suit, &c.

BARKER GUMMERE,
Att'y of Pl'tffs.

47 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say, as to the first, second, third, fourth, and fifth counts in said declaration, that the said supposed writings obligatory are not their deeds, and of this they put themselves upon the country, &c. And the said defendants for a further plea in this behalf, by leave of the court here first had and obtained according to the form of the statute in such case made and provided, come and defend the wrong and injury, when, &c., and say, as to the sixth count in said declaration, that they do not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

48 No. 6.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Montclair, in the County of Essex, who are citizens of the State of New Jersey, incorporated by that name by the said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, the plaintiff therein, of a plea that they render to him the sum of five thousand dollars, which they owe to and unjustly detain from him, as is said; and thereupon the said plaintiff, by Barker Gummere, his attorney, complains:

49 For that whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions

of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered thirty-nine, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-six, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the

same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he is still the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable, according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and eighty dollars, parcel of the sum above demanded.

50 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered forty, which bond, signed, and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and seventy-six, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there regis-

tered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said bond and coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said bond and coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said bond and coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto

wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of twelve hundred and eighty dollars, parcel of the sum above demanded.

51 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-four, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said

defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable, according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-five, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of

November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the, first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendant would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he

became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

54 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-seven, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby, then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office"

were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of the said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath

accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

56 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. 1870, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in

said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn, as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and sixty-nine, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of Novem-

ber, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

57 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of seven hundred and sixty dollars, for interest for the forbearance by the plaintiff, at the defendants' request, of money due and owing from the defendants to the plantiff, and to be paid by the defendants to the plaintiff upon request, whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of seven hundred and sixty dollars, residue of the sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuses so to do, to the damage of the plaintiff of one thousand dollars; and therefore he brings suit, &c.

BARKER GUMMERE,
Att'y of Pl'ff.

58 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say, as to the first, second, third, fourth, fifth, sixth, seventh, and eighth counts in said declaration, that the said supposed writings obligatory are not their deeds; and of this they put themselves upon the country, &c.

And the said defendants, for a further plea in this behalf, by leave of the court here first had and obtained according to the form of the statute in such case made and provided, come and defend the wrong and injury, when, &c., and say, as to the ninth count in said declaration, that they do

not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

59 No. 7.

Circuit court of the United States for the third circuit and district of New Jersey, of the twelfth day of February, A. D. eighteen hundred and seventy-seven.

DISTRICT OF NEW JERSEY, *ss:*

The Inhabitants of the Township of Montclair, in the County of Essex, who are citizens of the State of New Jersey, incorporated by that name by the said State, and having their principal place of business therein, defendants in this suit, were summoned to answer unto Charles Dana, a citizen of the State of New York, the plaintiff therein, of a plea that they render to him the sum of five thousand dollars, which they owe to and nujustly detain from him, as is said; and thereupon the said plaintiff, by Barker Gummere, his attorney, complains:

60 For that whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and eighty-nine, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the matu-

rity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, ac-

cording to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

61 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest

coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-stx, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

62 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-

thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of

May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy-three, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen

hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of moneys in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

64 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy-four, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the afore-

said act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of the said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants

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by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy-six, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-

five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the Sate of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said in-

terest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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pons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

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eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which s m did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and seventy-nine, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said in-

terest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

70. And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seven-

teenth day of March, A. D. eighteen hundred and seventy, in the county of Essex, and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and eighty, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the

first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

71 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and eighty-one, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety-one, and also the interest thereon at the rate of seven per cent. per an-

num, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay to the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the

said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

72 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township, duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and eighty-two, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National State Bank of Newark, on the first day of November, eighteen hundred and ninety-one, and also the interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the

National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

73 And whereas, in the months of August and September, A. D. eighteen hundred and sixty-nine, and in the month of February, A. D. eighteen hundred and seventy, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of

the Montclair Railway Company," approved April 9, 1868, certain persons owning, or representing as agent or president, as least two-thirds of the real estate and landed property of the township of Montclair, in the county of Essex and State of New Jersey, at the valuation prescribed by said act, did consent, in writing, that the sum of two hundred thousand dollars, which sum was mentioned in said written consent, and which sum did not exceed twenty per centum of the valuation of the real estate and landed property of the township aforesaid, as prescribed by said act, should be raised in said township and be invested in the bonds of the said Montclair Railway Company; and thereupon, afterwards, to wit, on the seventeenth day of March, A. D. eighteen hundred and seventy, in the county of Essex and State of New Jersey, and within the district aforesaid, the said defendants, by and under the hands and seals of Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners of said township duly appointed and sworn as directed by the provisions of the aforesaid act, did then and there, pursuant to the provisions of the aforesaid act, make their bond, bearing date the day and year last aforesaid, numbered one hundred and eighty-three, which bond, signed and sealed as aforesaid, is shown to the court here, and did thereby then and there acknowledge that they, the said defendants, did owe to Samuel Holmes, or the bearer thereof, one thousand dollars, which sum they did thereby promise to pay to the holder thereof, at the National Bank of Newark, on the first day of November, eighteen hundred and ninety-one, and also the interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first days of May and November in each and every year until the maturity of said bond, on the presentation and surrender of the interest coupons thereto annexed at the said bank. And it was by said bond then and there declared that the said bond was issued in pursuance of the aforesaid act of the legislature of the State of New Jersey, and the said bond was then and there registered in the clerk's office of the said county of Essex, and the words "Registered in the county clerk's office" were then and there printed across the face of the said bond and attested by the signature of the then clerk of the said county of Essex. And there was then and there annexed and attached to said bond certain interest coupons, by one of which it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the National State Bank of Newark, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-three, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of which said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-four, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was

stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-five, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond, and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of May, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond; and by another of said interest coupons it was stated and expressed that the said defendants would pay the holder thereof, on the first day of November, eighteen hundred and seventy-six, thirty-five dollars, on presentation of said coupon at the same bank above mentioned, for semi-annual interest on said bond. And the plaintiff in fact says that before the first day of May, eighteen hundred and seventy-three, to wit, in the county, State, and district aforesaid, he became, for valuable consideration by him in public market paid, the holder and bearer of said bond and of said interest coupons, and that he still is the holder and bearer thereof, and entitled to the payment of the several sums of money in said coupons respectively specified; by means whereof the said defendants became liable to pay to the said plaintiff the said several sums of money in the said coupons respectively specified, according to the respective tenor and effect thereof; and although the said several sums of money in the said coupons respectively specified have long since been due and payable according to the respective tenor and effect thereof, yet the said defendants did not pay the same to the said plaintiff, but have hitherto wholly refused so to do; by means whereof an action hath accrued to the said plaintiff to demand and have from the said defendants the sum of two hundred and eighty dollars, parcel of the sum above demanded.

74 And whereas the said defendants afterwards, to wit, on the sixth day of January, A. D. eighteen hundred and seventy-seven, in the county, State, and district aforesaid, were indebted to the said plaintiff in the sum of ten hundred and eighty dollars, for interest for the forbearance by the plaintiff, at the defendant's request, of money due and owing from the defendants to the plaintiff, and to be paid by the defendants to the plaintiff upon request, whereby an action hath accrued to the said plaintiff to have and recover from the said defendants the sum of ten hundred and eighty dollars, residue of the sum above demanded, yet the said defendants, although often requested so to do, have not as yet paid the said sum of five thousand dollars, or any part thereof, to the said plaintiff, but refuse so to do, to the damage of the plaintiff of one thousand dollars; and therefore he brings suit, &c.

BARKER GUMMERE,
Att'y of Pl'tff.

75 And the said defendants, by McCarter and Keen, their attorneys, come and defend the wrong and injury, when, &c., and say, as to the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth counts in said declaration, that

the said supposed writings obligatory are not their deeds; and of this they put themselves upon the country, &c. And the said defendants, for a further plea in this behalf, by leave of the court here first had and obtained according to the form of the statute in such case made and previded, come and defend the wrong and injury, when, &c., and say as to the fifteenth count in said declaration that they do not owe the said sum of money therein demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them; and of this the said defendants put themselves upon the country, &c.

And the plaintiff doth the like.

76 United States circuit court, district of New Jersey.

CHARLES DANA
vs.
THE INHABITANTS OF THE TOWNSHIP OF Montclair, in the County of Essex. } In debt. Action No. 1.

SAME
vs.
SAME. } In debt. No. 2.

SAME
vs.
SAME. } In debt. No. 3.

SAME
vs.
SAME. } In debt. No. 4.

SAME
vs.
SAME. } In debt. No. 5.

SAME
vs.
SAME. } In debt. No. 6.

77 SAME
vs.
SAME. } In debt. No. 7.

On motion of McCarter and Keen, attorneys of defendants, it is ordered that the several causes above stated be, and the same are hereby, consolidated into one cause.

Entered March 27, 1878.

By the court.

Attest: S. D. OLIPHANT, *Clerk.*

78 Therefore let a jury come before the said court at the September term thereof, A. D. eighteen hundred and seventy-eight.

And now at this day, to wit, the third day of December, A. D. eighteen

hundred and seventy-eight, in the term aforesaid, came before the said court as well the said plaintiff by his attorney as the said defendants by their attorneys, and the jurors of the jury, being duly summoned, also come, who to speak the truth of the matters within contained being chosen, tried, and sworn, upon their oaths say that the said writings obligatory in the declarations mentioned are the deeds of the said defendants, and that the said defendants owe to the said plaintiff the sum of thirty-five thousand twenty-two dollars and sixty cents, parcel of the sum above demanded; and they assess the damages of the said plaintiff on the occasion of the detention of that debt, over and above his costs and charges by him about his suit in this behalf expended, to five thousand eight hundred and forty dollars, and for those costs and charges at six cents. Therefore, it is considered that the said plaintiff do recover against the said defendants his said debt of thirty-five thousand and twenty-two dollars and sixty cents,
by the jury aforesaid found, and his said damages of five thou-
79 sand eight hundred and forty dollars by the jury aforesaid assessed above his costs and charges aforesaid, and the sum of seven hundred and twenty-six dollars and five cents now here adjudged to him for his said costs and charges.

And the said defendants in mercy, &c.

Judgment signed this third day of December, A. D. eighteen hundred and seventy-eight.

JNO. T. NIXON, *J.*

80 *Bill of exceptions.*

Circuit court of the United States, district of New Jersey.

CHARLES DANA
vs.
THE INHABITANTS OF THE TOWNSHIP OF Montclair, in the County of Essex. } In debt.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

Be it remembered that on the twenty-ninth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, at a circuit court of the United States in and for the district of New Jersey, at Trenton, in said district, the issues joined in the above stated cause upon the pleadings therein, between the said parties pro ut, the same came on to be tried before the honorable John T. Nixon, a judge of said court, by
a jury for that purpose duly empannelled, in the presence of Barker
81 Gummere, esquire, the attorney of the plaintiff and of Thomas N. McCarter, esquire, one of the attorneys of the defendants, with whom was John L. Blake and Benjamin Williamson, esquires, of counsel for said defendants, whereupon the said attorney of the plaintiff, having first opened his case to the jury, in order to maintain the issue on the part of said plaintiff offered and read in evidence to the jury certain sections of an act of the legislature of the State of New Jersey, entitled "An act to incorporate the Montclair Railway Company," which act was approved

March 18, 1867, as the same is published in the pamphlet session laws, of the said State of New Jersey for the year 1867, on page 301, which sections of said act of the legislature are as follows, to wit:

1. Be it enacted by the senate and general assembly of the State of New Jersey, That Albert Pearce, Henry C. Spalding, Samuel Wilde, Joseph B. Beadle, Julius H. Pratt, and *and* such other persons as may hereafter be associated with them, shall be, and are hereby, ordained, constituted, and declared to be a body corporate and politic in fact and in name,
82 by the name of "The Montclair Railway Company," and by that name they and their successors and assigns shall and may have continual succession, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defend*ed* and being defended, in all courts and places whatsoever, and shall have power to make and use a common seal, and the same at pleasure to alter; and they and their successors, by the same name and style, shall be capable of purchasing, holding, and conveying any lands, tenements, goods, and chattels whatsoever necessary or expedient for the objects of this incorporation.

2. And be it enacted, That the capital stock of said company shall be five hundred thousand dollars, and shall be divided into shares of one hundred dollars each, but said company may increase the same to an amount not exceeding the cost of the railway and appurtenances which are hereinafter authorized; and the said capital stock shall be deemed personal property, and shall be transferrable in such manner as the by-laws of the said company shall direct.

83 3. And be it enacted, That the above-named persons, or a majority of them, may open books and procure subscriptions to the capital stock of the said company at such time or times, and place or places, as they, or a majority of them, may think proper, and whenever there shall be one thousand shares of the said stock subscribed the said corporators, or a majority of them, may give notice for a meeting of the subscribers to choose nine directors, and such election shall be held at the time and place appointed in the said notice by such subscribers as shall attend for that purpose, either by lawful proxy or in person, each share of the capital stock entitling the holder thereof to one vote; and the above-named corporators, or a majority of them, shall be inspectors of such election, and shall certify under their hands the names of those persons duly elected as directors, and deliver over the subscription books to the said directors at the first meeting of the said directors; and the said directors so chosen as aforesaid shall, at their first meeting, or annually at
84 the annual election of the said company, or as soon as may be after every such election, choose out of their own number a president; and in case of the death, resignation, or removal of the president, or any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen by the said board of directors, or a majority of them, and in case of the absence of the president the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of the said company shall provide.

6. And be it enacted, That the president and directors of the said company be, and they are hereby, authorized and invested with all the rights

and powers necessary or expedient to survey, lay out, and construct a railway from the village of Montclair, in the township of Bloomfield, in the county of Essex, to the Hudson River, at the Tavonia Ferry, or at the Hoboken Ferry, or between the said ferries, and may construct a branch thereof in said township, and may extend the said railway into the townships of Caldwell and Wayne; but said railway shall not exceed
85 one hundred feet in width, unless more land shall be required for the slopes of cuts and embankments, with as many sets of tracks and rails as said company may deem necessary; and it shall be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ to enter at all times upon all lands or waters for the purpose of exploring, surveying, levelling, and laying out the route or routes of such railway, and of locating the same, and to locate and erect all necessary works, buildings, conveniences, appurtenances, and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such railway and the location or locations of other works, buildings, conveniences, appurtenances, and appendages thereof shall have been determined upon, and a survey of such route or routes, location or locations, deposited in the office of the secretary of state, then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, workmen, and other persons in their employ to enter upon, take possession of, have, hold, use, occupy, and ex-
86 cavate any such lands, and to erect embankments, bridges, and all other necessary works, lay rails, and to do all other things which may be suitable or necessary for the completion, repairs, or management of the said railway, and for the conveyance of passengers and freight to and from the terminus thereof, to and from the city of New York, or elsewhere, subject to such compensation as is hereinafter provided; provided, always, that the payment, or tender of the payment, of all damages for the occupancy of the lands through or upon which the said railway and its conveniences, appurtenances, and appendages may be laid out or located, be made before the said company, or any person under their direction or employ, shall enter upon or break ground in the premises, except for the purposes of surveying and laying out said railway and its conveniences, appurtenances, and appendages, and of locating the same, unless the consent of the owner or owners of such land be first had and obtained.

SECTION 10. And be it enacted, That the president and directors of the said company shall have power to have constructed or to purchase
87 with the funds of said company, and to place on the railway constructed by them, all machines, engines, wagons, carriages, or vehicles for the transportation of persons or any species of property thereon as they may think reasonable, expedient, or right; provided they shall not charge more than at the rate of twelve cents per mile per ton for the transportation of property on the said railway, or eight cents per mile for carrying each passenger on said railway in the carriages of the said company, or six cents per ton per mile for each ton of property transported, or four cents per mile for each passenger carried on said railway in the carriages of others, and three cents per ton per mile for each empty carriage; and that the railway and its appendages and the lands over which the same shall pass, and all the works and improvements, steam-engines, and carriages, and all other property whatsoever belonging to the said

company at any time or times are hereby vested in the said company incorporated by this act, and their successors and assigns, during the continuance of this act.

88 SECTION 12. And be it enacted, That the said company may have and take real estate at the commencement and termination of said railway, and at its several stations on the lines of the said railway, to a sufficient extent to provide accommodations and conveniences for the business of said railway, and may erect and build thereon houses, warehouses, machine shops, and such other buildings and improvements as it may deem expedient for the safety of property and construction of carriages and other necessary uses, and take and receive the rents, profits, and emoluments thereof, and shall have the privilege and authority to erect, build, and maintain such bridges over any rivers or streams of water on the line of the railway as it may find expedient and necessary for full enjoyment of all the benefits conferred by this act; provided that the bridge constructed by said company over Passaic River shall have a draw of not less than sixty feet in width at a convenient place for the passage of vessels, unless said company shall build said bridge so that the bottom thereof shall be at least seventy-five feet above high-water mark, and

89 with two openings or expands of at least sixty feet wide; and provided further, that any bridge erected by said company over any other navigable stream shall have a draw of not less than sixty feet in width at a convenient place for the safety of vessels.

SECTION 18. And be it enacted, That the said company shall have the power, and it is hereby authorized, to make its bonds, and for the purpose of securing their payment to mortgage its real estate and personal property, railway or railways, and all the appurtenances, franchises, powers, and privileges, and rights belonging thereto which it may possess under its act of incorporation to such amount as it may deem expedient, and to sell or negotiate the same at such rate of interest or discount as it may deem for the best interest of the company without invalidation thereof by virtue of any statute of this State, and the said bonds and mortgages so sold or negotiated shall be valid and binding in law and equity, and the purchaser or purchasers under a decree in equity or foreclosure founded upon any such bond or mortgage, shall be invested with all the estate, rights,

90 franchises, powers, and privileges which are or may be conferred upon or possessed by said company under or by virtue of its act of incorporation and any supplements thereto; subject, nevertheless, to all restrictions, conditions, and limitations contained therein.

SECTION 19. And be it enacted, That it shall and may be lawful for any corporation to subscribe for, purchase, and hold the stock and bonds of the said railroad company.

SECTION 20. And be it enacted, That this act shall take effect immediately.

The plaintiff's attorney also offered in evidence another act of the legislature of the State of New Jersey, entitled "An act to incorporate the township of Montclair," approved April 15th, 1868, as the same is published in the pamphlet session laws of the said State of New Jersey for the year 1868, on page 199, which act of the legislature is as follows, to wit:

1. Be it enacted by the senate and general assembly of the State of New

Jersey, That all that portion of the township of Bloomfield known as the second election district of said township, and lying west of a line
91 running through said township, as follows: Beginning at a point in the center of the stone arch bridge over the stream crossing the road west of and near to the residence of Henry Stucky on the Orange line; thence from said starting point in a straight line about north thirty-one degrees five minutes east to a point in the Passaic County line, which point is five hundred feet west on said county line from the center of the road running in front of the residence of Cornelius Van Houten, shall be, and hereby is, set off from the township of Bloomfield, in the county of Essex, and made a separate township, to be known by the name of the township of Montclair.

2. And be it enacted, That the inhabitants of the township of Montclair shall be, and they are hereby, constituted a body politic and corporate in law by the name of the inhabitants of "the township of Montclair, in the county of Essex," and shall be entitled to all the rights, powers, privileges, and advantages, and shall be subject to all the regulations, government, and liabilities to which the inhabitants of the other townships in said county of Essex are or may be entitled or subject by the laws of this State.

92 3. And be it enacted, That the inhabitants of the said township of Montclair shall hold their first town meeting at the lecture room of the Presbyterian church in said township of Montclair, on the third Tuesday in April, eighteen hundred and sixty-eight, and that thereafter their annual town meeting shall be held on the second Monday in March of each and every year; that at their town meetings they shall vote by ballot until it be otherwise determined according to law, and that all the provisions and restrictions of an act entitled "An act to authorize the inhabitants of the several townships of this State to vote by ballot at their town meetings," approved March twenty-second, eighteen hundred and sixty, and of the supplements thereto, shall apply to the inhabitants of the said township of Montclair, and all acts and parts of acts in force in the said township of Bloomfield at the time of the passage of this act are hereby extended to and shall be in force in the said township of Montclair, but the provisions of any act or acts from the operation of which the township of Bloomfield has by any proviso or exception contained therein been specially excepted
93 shall apply to and be in force in said township of Montclair from and after the time this act shall go into effect, the same as if the township of Bloomfield had not been specially excepted therein.

4. And be it enacted, That the persons who shall act as judges of election and clerk of election at the first town meeting of the inhabitants of the said township of Montclair shall be chosen in the manner provided by law, in the event of the absence of the judge of election, the collector, the assessor, and the clerk of the township.

5. And be it enacted, That Robert M. Hening, Grant J. Wheeler, and Philip Doremus shall be, and they are hereby, appointed commissioners on the part of *of* the said township of Montclair to meet with three other commissioners on the part of said township of Bloomfield, which last said commissioners shall be appointed by the town committee of said township of Bloomfield previous to the fourth Tuesday in April, eighteen hundred and sixty-eight; that said meeting of said commissioners shall take place at the post office in Bloomfield, in said township of Bloomfield, at ten

94 o'clock in the forenoon of the fourth Tuesday in April, eighteen hundred and sixty-eight, that the said commissioners shall then and there proceed, by writing, signed by a majority of those present, to allot and divide between the said townships all property and money on hand or due, in proportion to the taxable property and rateables as taxed by the assessor at the last assessment, and to ascertain the just proportion of debts, if any there should be, to be paid by the inhabitants of the township of Montclair; and that if any of the said commissioners on the part of either of said townships should neglect or refuse to meet as aforesaid, those assembled may proceed to make the said division and to ascertain the said proportion of the debts to be paid by the inhabitants of the said township of Montclair, and the decision of the majority of those present shall be final and conclusive, and the said commissioners, or a majority of them, shall and may sell and execute a deed of the township almshouse farm, which deed shall be deemed and taken to convey a good and sufficient title thereto, and said township of Montclair shall pay its proportion of the existing debt of the
95 township of Bloomfield at the time or times when payment, either of principal of interest thereon, shall become due and payable; provided that it shall and may be lawful to adjourn the said meeting to such time or times and place or places as a majority of those assembled as aforesaid may think proper.

6. And be it enacted, That the said commissioners shall, when they have completed the said allotment and division, and shall have ascertained the proportion of the said debts to be paid by the inhabitants of the said township of Montclair, in writing as aforesaid, prepare forthwith a duplicate of the same, and deliver one of the said writings to the clerk of the said township of Bloomfield, to be by him filed and preserved, and the other to the clerk of the said township of Montclair for the same purpose.

7. And be it enacted, That the assessor of the said township of Montclair shall have power, and he is hereby required and enjoined, to add the said proportion of the said debts, when the same shall have been ascertained as aforesaid, together with ten per centum of the said proportion to the amount of taxes that may be otherwise by law required to be
96 raised in said township of Montclair for the year or years in which such debt, or the interest thereon, shall become due and payable, to be assessed and collected in the same manner and at the same time as the State and county taxes for said year or years by said township of Montclair, and the collector for the said township of Montclair is hereby required and enjoined to pay the said proportion of the said debts so as aforesaid ascertained, together with the lawful interest that may be or become due thereon, to the collector of the township of Bloomfield, for the use of the said township of Bloomfield, out of the first moneys that shall come to his hands, after deducting sufficient to pay the State and county taxes to be paid by said township of Montclair for such year or years, and he shall take the receipt of the collector of said township of Bloomfield therefor, and the inhabitants of the said township of Montclair shall thereupon be free and discharged and released of and from all liability by reason of the debts aforesaid.

8. And be it enacted, That the sums of money voted to be raised for township purposes at the last annual town-meeting of said town-
97 ship of Bloomfield shall not be assessed and collected in full in

said township, but the several sums to be assessed and collected therein for said purposes, respectively, shall bear such proportion to the sums so voted as aforesaid as the taxable property in the whole of said township shown by the assessment of the year eighteen hundred and sixty-seven bears to the taxable property in that section of said township not included in said township of Montclair, and the assessor of said township shall assess such amounts so proportionally reduced, and such assessment, when made, shall be as valid and effectual in law as if the amounts so assessed had been the sums voted to be raised at the annual meeting aforesaid, and nothing in this act shall affect the election of any township officers made at such meeting whenever said officers shall not reside in the new townships hereby created.

9. And be it enacted, That the persons now aided or maintained in said township of Bloomfield by virtue of any laws in regard to the poor shall hereafter be chargeable under said laws to said townships of Montclair and Bloomfield, accordingly as the settlement or residence of such poor
98 persons may have been within the limits of either township respectively at the time when said persons became chargeable as aforesaid.

10. And be it enacted, That this act shall be a public act, and shall take effect on the third Tuesday in April now next ensuing.

The plaintiff's attorney also offered and read in evidence another act of the legislature of the State of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," which act was approved April 9, 1869, as the same is published in the pamphlet session laws of the said State of New Jersey for the year 1868, on page 889, which act is as follows, to wit:

1. Be it enacted by the senate and general assembly of the State of New Jersey, That on the application in writing of twelve or more freeholders, residents of any township, town, or city along the routes of the Montclair Railway Company, or at the termini thereof (except the township of Bloomfield, in the county of Essex, which township is hereby ex-
99 cepted from the operation of all the provisions of this act), it shall be the duty of the judge of the circuit court of the county wherein such freeholders reside, within ten days after receiving such application, to appoint under his hand and seal not more than three freeholders, residents of such township, town, or city, to be commissioners thereof, to carry into effect the purposes and provisions of this act; said commissioners shall hold their offices respectively for the term of five years, and until others shall have been appointed.

2. And be it enacted, That it shall be lawful for said commissioners to borrow, on the faith and credit of their respective townships, towns, or cities, such sums of money, not exceeding twenty per centum of the valuation of the real estate and landed property of such township, town, or city, to be ascertained by the assessment rolls thereof, respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding twenty-five years, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and to execute bonds therefor
100 under their hands and seals respectively. The bonds so to be executed may be in such sums, payable at such times and places, as

the said commissioners and their successors may deem expedient; but no such debt shall be contracted or bonds issued by said commissioners of or for either of said townships, towns, or cities until the written consent of persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of such township, town, or city, borne on the last assessment-roll thereof at the valuation thereon appearing, shall have been obtained. Such consent shall state the amount of money authorized to be raised in such township, town, or city, and that the same is to be invested in the bonds of the said railway company, and the signatures shall be proved by one or more of said commissioners. The fact that the persons signing such consent own or represent as aforesaid at least two-thirds of the taxable real and landed property of such township, town, or city shall be proved by the affidavit of the assessor of such township, town, or city, indorsed upon or annexed to said written consent, and the assessor of such township, town, or city
101 is hereby required to perform such service. Such consent and affidavit shall be filed in the office of the clerk of the county in which such township, town, or city is situated, and a certified copy thereof in the office of the clerk of such township, town, or city, and the same, or a certified copy thereof, shall be evidence of the facts therein contained, and shall be received as evidence in any court of this State and before any judge or justice thereof.

3. And be it enacted, That the said commissioners authorized by this act may, in their discretion, dispose of such bonds, or any part thereof, to such persons or corporations, and upon such terms as they shall deem most advantageous for their said townships, towns, or cities, but not for less than par, and the money that shall be raised by any loan or sale of bonds shall be invested in the bonds of the said railway company for the purpose of building the railway thereof, and said money shall be applied and used in the construction of said railway, its buildings, equipments, and necessary appurtenances, and for no other purpose. The commissioners re-
102 spectively, in the corporate name of each of their said townships, towns, or cities shall subscribe for and purchase bonds of said railway company to the amount that they severally may have borrowed as aforesaid.

4. And be it enacted, That the said commissioners respectively authorized by this act shall report to the township committees of their respective townships, or to the common councils of their respective towns or cities, at their regular annual meeting in each year, the amount required to pay principal or the interest, if any, on the said bonds authorized to be issued under and by virtue of this act, due or to become due, and payable during the next ensuing year. The interest arising from the bonds so subscribed for or purchased by said township, town, or city, in pursuance of this act, shall be received by the said commissioners and by them applied to the payment of the interest which shall, from time to time, accrue upon the bonds authorized by this act, and in case such interest shall not be sufficient in any one or more years to pay the principal and interest accruing
103 on said bonds, due or to become due as aforesaid, it shall be, and is hereby made the duty of the said township committee, or of said town or city council, as the case may be, and they are hereby authorized and required to cause to be assessed and levied and collected of the real

property of said township, town, or city, respectively, at the same time and in the same manner as other taxes are assessed, levied, and collected, such sum or sums of money as shall have been reported to said township committee, or said town or city council, by the said commissioners authorized by this act to make good such deficiency in the payment of the said principal and interest on the said bonds, and the same, when collected, shall be paid to said commissioners respectively, and by them applied to the payment of the principal and interest on said bonds, or so much thereof as shall remain unpaid after the application of interest or principal received from said company to that purpose.

5. And be it enacted, That the said commissioners appointed under and by virtue of this act may, at any time after acquiring the bonds of
104 said company, exchange the same in whole or in part for the bonds issued under the authority of this act, and in such case they shall cancel the bonds so received by them, or they may dispose of the said railway bonds in their discretion to any purchaser or purchasers for cash, but shall not sell or dispose of such bonds for less than par, except at public sale, of which twenty days' notice shall be given in two newspapers published in their respective counties, but no such sale shall be made except by consent obtained to the extent and in the manner provided in the second section of this act; and in case of such sale the proceeds thereof shall be applied by said commissioners respectively to the purchase or redemption of the bonds authorized to be issued by this act, and for no other purpose whatever.

6. And be it enacted, That at the expiration of twenty-five years after the passage of this act, it shall be, and hereby is, made the duty of the said township committees, and of the said town and city councils, and they are hereby authorized, unless the payment of said bonds is otherwise provided for, to cause to be assessed and levied and collected as aforesaid the
105 sum due on the said bonds so issued in pursuance of this act, together with the interest on said principal sum, or so much thereof as may remain unpaid by reason of any deficiency after the sale of said railway bonds and the receipt of the interest thereon; and the amounts so to be raised under the authority of the said township committees and of the said town and city councils for the payment of the said principal or interest shall be determined by the report of the said commissioners respectively to the said township committees or said town or city councils, as hereinbefore authorized by this act.

7. And be it enacted, That the said commissioners shall also provide within five years from the time of issuing said bonds authorized by this act, for the annual payment of at least five per centum of the same, so as to ensure the final liquidation of said bonds within twenty-five years after their date, and for that purpose they shall receive and apply annually the surplus interest on the bonds held by such townships, towns, or cities over the amount necessary to pay the semi-annual interest on bonds issued under authority of this act, and if the amount of such surplus interest
106 is not sufficient for the annual payment of said five per centum, and the said commissioners shall not have received sufficient from the sale of the said railway bonds, as hereinbefore provided, to pay the same, then the deficiency shall be reported by the said commissioners to the township committees, or town or city councils, to be levied and raised an-

nually in the manner provided herein for paying the interest on the bonds authorized to be issued by this act.

8. And be it enacted, That before the said commissioners, or either of them, shall enter upon the discharge of their duties under this act they shall jointly and severally, with two or more sureties, execute to their respective townships, towns, or cities, by their respective corporate names, a bond or bonds in the penal sum equal to the amount to be issued by said townships, towns,or cities, under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act and for the just and honest application by them of all moneys or bonds issued by them or coming into their hands according to the true intent and meaning of this act. The sufficiency of such sureties shall be determined
107 by the judge of the circuit court of the county wherein such township, town, or city is situated, to be endorsed on said bonds. The said bonds shall immediately thereafter be deposited with the clerk of such township, town, or city, to be safely kept under the control and direction of the township committee, town, or city council, to be collected by them or their successors in office for the use and benefit of such township, town, or city, in case the said commissioners, or either of them, are guilty of such a breach of trust or malfeasance in office as to render said bonds collectible.

9. And be it enacted, That in case a vacancy shall happen by reason of death, removal from said township, town, or city, resignation, refusal to serve, or otherwise, of either of said commissioners, the vacancy shall be filled by the remaining commissioners of the township, town, or city in which such vacancy so exists, by appointment in writing, to be deposited with the clerk of said township, town, or city. Each and every person so appointed shall, before he enters upon the discharge of his duties, execute and deliver to the said township, town, or city, in like manner, a bond in like amount, with like conditions and securities, as hereinbefore provided, and all provisions of this act shall apply to the successors of the
108 commissioners provided for in this act, whose powers and duties and liabilities shall be the same as those of the commissioners first appointed under this act

10. And be it enacted, That each of the said commissioners shall receive the sum of three dollars per day for each day actually engaged in the discharge of his duties under this act, and his necessary disbursements, to be audited and paid by the township committee, town or city council, the same as any other township, town, or city expenses.

11. And be it enacted, That on the expiration of the term of office of either of the commissioners provided for in this act, or of their successors, his place shall be filled in the manner provided in the first section of this act, and the commissioners so appointed, as well as those to be appointed under the ninth section of this act, shall be residents and freeholders of the township, town, or city for which they are to act as such commissioners.

12. And be it enacted, That all bonds issued in accordance with
109 the provisions of this act shall be registered in the office of the county in which the township, town, or city so issuing is situated, and the words "Registered in the county clerk's office" shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bonds shall be valid unless so registered.

13. And be it enacted, That the commissioners in each of said townships,

towns, or cities shall constitute a board to act for their said townships, towns, or cities respectively, and a majority of said commissioners in each of said boards shall constitute a quorum to do any business authorized by this act.

14. And be it enacted, That in case any new township, town, or city shall have been created, or the boundaries of any township, town, or city shall have been enlarged on the routes of said railway, or at the termini thereof, so that there is no assessment-roll for the year eighteen hundred and sixty-seven for such township, town, or city, so created or enlarged, the said commissioners for such new or enlarged township, town, or city shall cause to be prepared an assessment-roll for the purposes of this
110 act, by extracting from any assessment-roll or rolls of persons or property in the territory embraced in the said new township, town, or city so created, or in said enlargement.

15. And be it enacted, That this act shall be a public act, and shall take effect immediately.

The plaintiff's attorney also offered and read in evidence another act of the legislature of New Jersey, entitled "A supplement to the act entitled 'An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company,'" approved March 27, 1874, as the same is published in the pamphlet session laws of the said State of New Jersey for the year 1874, on page 739, which act is as follows, to wit:

1. Be it enacted by the senate and general assembly of the State of New Jersey, That hereafter the township committees for the time being of the township of Montclair, in the county of Essex; the township of Kearney, in the county of Hudson, and the township of Pompton, in the county of Passaic, respectively, shall be the commissioners provided for in the first section of the act to which this is a supplement, and shall discharge all
111 the duties and be subject to all the liabilities of such commissioners under said act.

2. And be it enacted, That so much of such act as is inconsistent herewith is hereby repealed, and this act shall take effect immediately.

And thereupon plaintiff's attorney, in further support of the issue on the part of said plaintiff, called and had duly sworn a witness, JOHN J. TERRY, who testified as follows:

Direct examination by Mr. GUMMERE:

Q. Do you reside in the city of New York?
A. I do, sir.
Q. Are you a member of the firm of E. D. Morgan & Co.?
A. I am.
Q. Are they bankers in the city of New York?
A. Merchants.
Q. (Handing witness a paper.) Will you look at that promissory note, Mr. Terry?
(Witness examined paper.)
Q. Did you ever see that before?
A. I believe I have, sir.

Q. Was that ever held by E. D. Morgan & Co.?

A. It was, sir.

112 Q. Tell us how E. D. Morgan & Co. got the note.

A. We advanced upon some bonds of the Montclair Railroad and Burnside—is it Burnside?

Q. Woodside.

A. Woodside. There were, I think, 64 of the Montclair bonds, and 3 of the other, I think it was $67,000—yes, 64 of the Montclair and three of the Woodside.

Q. You received them as collateral for that note?

A. We did, sir.

Q. Who did you receive the note from?

A. Mr. Pratt, president at that time of the Montclair Railroad.

Q. You discounted that note for him, or bought the note from him?

A. No, sir; advanced the money on it.

Q. On the note?

A. Yes, sir.

Q. How much?

A. We advanced him—I think, we gave him our note for a like amount—$50,000.

Q. What is the amount of that note?

A. $50,000, dated April 25th, 1873, payable four months after date to the New York, Oswego and Midland Railroad Co., pledging these bonds with the specified numbers as collateral security.

113 Q. The 64 bonds that are in suit in this cause, are they?

By Mr. McCARTER. He has not said that.

Q. You do not know?

A. I do not know.

Q. The 64 bonds of $1,000 each of the township of Montclair were pledged to you?

A. They were, and the numbers stated in the note.

Q. What did this note that you gave to Mr. Pratt in exchance for that—what became of your own note?

A. It was discounted; it was sold by them—I can't answer that.

Q. Did you pay it?

A. We paid the note; yes.

Q. When it came due you paid the note?

A. Yes, when it came due.

Q. How about that note you hold in your hand?

A. It was never paid.

Q. Is it accompanied with the usual protest?

A. It is, sir.

Q. Well, after that note fell due, did you take any steps to realize on your collaterals?

114 A. We endeavored to collect it of Mr. Pratt; my recollection is that he stated the board were unable to pay it, and after a certain lapse of time we notified the company that we were going to sell the bonds at auction.

Q. Did you sell the bonds at auction?

A. Yes, sir; they were sold by an order.

Q. And do you know who bought them?

A. I think they were bought by Mr. Charles Dana.

Q. Did Mr. Charles Dana pay you?

A. We received it—I suppose we received it from the auctioneer, that is my recollection of it.

Q. The proceeds of the sale?

A. The proceeds of the sale; yes, sir.

Q. Would you recognize those bonds if you were to see them?

A. I suppose the numbers would be sufficient would they not; the numbers are all stated in the note; it would be proper to say this loan was renewed from time to time, and that some of the bonds were changed. Whether they were changed during the existence of this note or not I can't say, but I think not; I think you have all the bonds down there.

Q. (Handing witness a paper.) Is that one of them?

115 A. I should say that was one of them.

(And thereupon there was produced and shown to the witness sixty-four bonds purporting to have been issued by defendants, and numbered respectively as follows: 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 38, 39, 40, 110, 115, 129, 130, 131, 132, 152, 153, 154, 155, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, and after examining these he says:)

Those are the bonds.

Q. Where did this transaction take place, in the city of New York?

A. In the city of New York.

Q. Where is the note dated?

A. Dated in New York, sir.

Q. Where is it payable?

A. There is no statement in the note where it is payable; it was payable at the office of the railroad company.

Q. They had an office in New York?

A. Yes, sir.

116 Q. At the time you took these bonds who transacted the business?

A. I transacted it with Mr. Pratt.

Q. At the time you took these bonds, had your firm any knowledge or notice from any source of any fraud or any illegality in the issuing of these bonds?

(Defendants' counsel objected to the question, whereupon the court overruled the defendants' said objection and admitted the question, to which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.)

JNO. T. NIXON, *J.* [L. S.]

Q. Had your firm knowledge, or you, at the time you took these bonds, any knowledge or notice of any fraud, irregularity, or illegality in the issuing of these bonds?

A. We were assured——

(Interrupted.)

117 By Mr. McCARTER. We object to what they were assured.

By the WITNESS. We were assured positively——

(Interrupted.)

Q. No; had you any knowledge?
A. We had none, sir.

Cross-examined by T. N. McCarter, Esq.:

Q. The original note, Mr. Terry, please.
(Witness handed same to counsel.)
Q. Did you hold this note until it matured?
A. We did, sir.
Q. Was this the original note, or one of the renewals?
A. One of the renewals; that is my belief.
Q. How many times had the note been renewed?
A. I should say it had been renewed twice. It may have been but once; once or twice.
Q. And did you receive on the first occasion the same bonds which have been produced here now?
A. On the first occasion my recollection is that Mr. Pratt came, leaving some short bonds that were about to mature, that he wanted to collect, and gave us those, and we took long ones. That is my recollection of it.

118 Q. After the original loan had been made?
A. Yes, sir.

Q. Are the bonds which you have called off the same mentioned in this note?
A. They are the same.
Q. You compared them when you looked at them?
A. Yes, sir.
Q. Did you receive the bonds at the time this note was given?
A. We did. You ask if we received them. At the time the note was received we held the bonds.
Q. You held these bonds at the time this note was given?
A. Yes, sir.
Q. And that as collateral to the same loan then renewed?
A. Yes, sir.
Q. You gave E. D. Morgan & Co.'s note for the same amount?
A. Yes, sir.
Q. To the railroad company?
A. To the railroad company.
Q. How long had that note to run?
A. I think four months, sir; the same time.
Q. The same length of time as this note?
A. Yes, sir.
Q. Was that note paid at maturity?
A. Yes, sir.

119 Q. What was the amount of it?
A. $50,000.

Q. Did you, or E. D. Morgan & Co., receive any consideration for making the exchange?
A. We did, sir. My impression is it was either two per cent. or two and a half per cent; the usual commission.
Q. In addition to the discounts?
A. We had nothing to do with discounts.

Q. No; you had your own note. You received 2 or 2½ per cent. on the amount of the note?

A. Yes, sir.

Q. For what was that received?

A. Compensation for advancing the note.

Q. Your note was not payable with interest?

A. No, sir.

Q. How did you receive what you say was paid?

A. Our note?

Q. No; how did you receive the two and a half or two per cent., whatever it was; how was it paid to you?

A. Paid in money.

Q. At the time of the original transaction?

A. At the time of this transaction.

Q. Was a like payment made at each renewal of the note?

A. Yes, sir; I can't say whether exactly the same amount; but I think it was.

120 Q. How long had the notes to run that were drawn previous to this?

A. Four months.

Q. They were all four-month notes?

A. Yes, sir.

Q. Who had charge of the sale of the collaterals after the maturity of this note?

A. I think, H. Muller & Co.

Q. They were the auctioneers?

A. Yes, sir.

Q. But who on behalf of your firm conducted the transaction?

A. I think our book-keeper.

Q. You did not give your personal attention to it?

A. No.

Q. You only know generally that they were sold—were ordered to be sold?

A. Yes, sir.

Q. And you left the details to be conducted by your book-keeper?

A. Yes, sir.

Q. You know personally who made the sale—what auctioneer?

A. I think, Muller & Co.

Q. Do you know it of your own knowledge, or how?

121 A. The bill was made out, sold by him, and I think the check was made to him.

Q. Do you know how much was realized on them?

A. About $36,000, I think. I have not the figures exactly.

Q. Were you present at the sale?

A. No, sir.

Q. When you say Charles Dana bought them; you speak from information derived from other persons; you have no personal knowledge of the fact?

A. That is my recollection now, sir.

Q. Can you tell us now how many times that note had been renewed?

A. I cannot say, sir; whether one, two, or three. I have not got it in my mind; my impression would be it was twice, but I am not sure.

Q. Then this would be the third note in the series, if it was renewed twice?

A. Yes, sir,

Q. You have no date or memorandum here by which you can tell when the first note was given?

A. No, sir; not thinking it was important, I did not bring it.

Q. Then after you gave the order or directions to your book-keeper
122 to have the bonds sold, you have no personal knowledge of the matter?

A. No, sir; none.

Q. That is all.

A. Am I at liberty to make any remarks?

Q. No, sir; I think you had better wait until the question is asked.

A. I merely asked for information.

Q. Yes, sir; that's all.

And thereupon the plaintiff, in further support of the issue on his part, called as a witness SERENO M. SMITH, who, being duly sworn, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Where do you live?

A. New York City.

Q. Are you a clerk in the employ of E. D. Morgan & Co.?

A. I am, sir.

Q. Were you such clerk in September, 1873?

A. I was.

Q. Mr. Terry has testified that they had certain transactions with the Montclair Railroad Co., in which they received a note of them, being for $50,000, endorsed by the Oswego & Midland Railroad Co., with
123 certain bonds pledged as collateral for the payment of that. Please to look at this paper, which I now hand you, and see whether you have any recollection of serving a notice of which this is a copy?

A. I have, sir.

Q. Please read that notice?

A. The whole of it?

Q. Yes, read it.

A. (Reading.) "D. E. Culver, esq., president: Dear sir: We intend to sell, &c." (Witness read notice signed "E. D. Morgan & Co.")

Q. What is the date of that?

A. September 12th, 1873.

Q. Well, sir, when did you serve that notice, and on whom?

A. I served this notice on D. E. Culver, president, on the 12th of September, at a quarter after two o'clock in the afternoon, and made a memorandum to that effect at the time.

Not cross-examined.

Plaintiff's attorney offered in evidence the copy of the notice read by this witness, and the same was thereupon marked Exhibit No. 1 on behalf of the plaintiff.

124 And thereupon the plaintiff, in further support of the issue on his part, called as a witness CHARLES DANA, who, being duly sworn, on his oath says in his own behalf:

Direct examination by Mr. GUMMERE:

Q. Mr. Dana, you are the plaintiff in this suit?

A. I am.

Q. Do you reside in the city of New York?

A. I do.

Q. Do those bonds which are on the table by your side, the bonds in suit in this case, belong to you?

A. They do.

Q. When and where did you get them?

A. I bought them at auction; the date you have before you; I can't remember.

Q. (Counsel hands witness a paper.)

A. (Witness examines paper.) September 17th, 1873.

By Mr. MCCARTER:

Q. What was the date?

A. September 17th, 1873.

Further direct:

Q. Do you say you bought them at auction?

A. I did.

Q. Where?

125 A. A. H. Muller; at least he was the auctioneer. It was 111 Broadway; that would be the proper answer, I suppose.

Q. What did you give for them?

A. Well, I gave $36,000 for them. There is a memorandum of what I paid for each lot as they were sold.

Q. (Advertisement being shown witness.) Was this in your hands at the time of the sale?

A. This was the advertisement from which I bid. It is distributed to all comers at an auction.

Q. That is the advertisement you had in your hand at the same time?

A. I take it as the same one, as it has my figuring on and has lain in my desk.

Q. The bonds were delivered to you?

A. Yes, sir.

Q. Have you held them ever since?

A. Not in my physical possession; they have been in my box in the Exchange, and sometimes when I was abroad I handed the bonds to a friend to have ready for this suit, supposing they would be used while I was abroad, but they are again in my possession.

Q. They still belong to you and have never been parted with or sold?

A. Never.

126 Q. At the time when you bought, had you any knowledge or notice of any fraud, illegality, or irregularity in the issuing of these bonds?

(Defendants' counsel objected to the question, whereupon the court overruled the defendants' said objection, to which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.)

JNO. T. NIXON, *J.* [L. S.]

A. None, whatever.

Cross-examined by Mr. McCARTER:

Q. Will you allow me to look at that advertisement, please.

(Witness handed same to counsel.)

Q. This paper, with the lead pencil marks on, is which you think you had when the sale took place?

A. I had that one, sir; or one exactly like it.

Q. These were distributed in the auction room to the customers when they came in?

127 A. No, sir; it not the custom in New York——

(Interrupted.)

Q. I did not ask you what the custom was, but what the fact was. I understood you to say they were distributed by the auctioneer?

A. I did not say the bonds——

(Interrupted.)

Q. I said the advertisement, sir.

A. You said the bonds.

Q. I didn't, I said advertisement.

A. I understood you to say bonds.

Q. No; I was inquiring about this paper I now have in my hands.

A. They were thrown in every morning in our office by boys, and when you came to the auctioneers there were boys there to distribute them; I can't tell you whether this is one I picked up in the office or whether it was one distributed to me; it is impossible to tell.

Q. How did you pay for the bonds?

A. I paid cash for them.

Q. In what instruments, bills or checks?

A. I gave a check—gave an order.

Q. On whom?

A. E. D. Morgan & Co.

Q. Who called your attention to the coming sale of these bonds?

A. The bill was left down in my office in the morning.

128 Q. Was that the first knowledge you had of the sale?

A. I do not know of any other.

Q. Did you see E. D. Morgan & Co. after you saw the bill and before the sale?

A. I probably did; I probably saw Mr. Terry.

Q. What was your business at that time?

A. That is a very difficult question to answer, sir.

Q. Well, sir, the difficulty is with you; if you can't answer, I can't; can you tell us?

A. I am not in any regular business, sir.

Q. But in 1873, when you bought these bonds?

A. I had no regular business any more than I have now.

Q. You are not engaged in any business?

A. No, sir; no actual business; I buy bonds and am interested in railroad matters.

Q. Were you connected in any way with the house of E. D. Morgan & Co.?

A. No, sir.

Q. And you paid for the bonds with an order on E. D. Morgan & Co.?

A. I did.

Q. At that time did you have that amount with E. D. Morgan & Co.?

A. I don't know what amount I had; I had a very fair amount,
129 probably, on deposit; what amount I don't know, but it would amount to many thousand dollars.

Q. You don't know what amouut you had on deposit at that time?

A. I had a large amount.

Q. How did you come to pay it in that way?

A. E. D. Morgan & Co.?

Q. Pay for the bonds with an order on E. D. Morgan & Co.?

A. I kept an account there for about 20 years; it may be somewhat less several years; I will explain it if you wish.

Q. Did you not buy those bonds at the recommendation of and at the request of Mr. Terry?

A. I did not.

Q. Was the order which you gave on E. D. Morgan & Co. charged to your account?

A. It was.

Q. Has it been settled, the account between you and them, since?

A. It was charged to me, the order.

Q. Have they no interest in those bonds now?

A. None, whatever.

Q. Direct or indirect?

A. Direct or indirect.

Q. At the time of the sale were they interested with you in any way in the purchase?

130 A. In no way whatever any more than being my friends.

Q. Did you know the bonds were sold on their account?

A. Yes, sir.

Q. Where did you find that out?

A. Very likely I may have had a conversation with them and heard that the bonds were to be sold, but I can't say; I don't think I knew of the sale before the same morning, or it was possibly the day before.

Q. Had you ever dealt in those bonds issued in aid of the Montclair Railroad before that transaction?

A. No, sir.

Q. Did not now, Mr. Dana, ever Mr. Terry or somebody from E. D. Morgan & Co. see you in regard to this purchase, and request you to make that purchase?

A. They did not.

Q. Nor recommend you to make that purchase?

A. They never recommended me to make it—I can't remember further than this; it seems to me Mr. Terry told me they were good bonds; he may have told me with no recommendation, but we were accustomed to confer together about such matters, sufficient to ask one another's opinion.

131 Q. When he told you that he also told you they were sold on their account, did he not?

A. It is possible—I had probably however—to make that clear, I think I had an impression or a knowledge that they had loaned money on some Montclair bonds; I had an impression or knowledge.

Q. How did you get that impression?

A. I think I saw them a year before or long time before loaning some money to Mr. Pratt, on the security of the Montclair Railroad.

Q. Do you mean you were present when the transaction was had?

A. No, sir; I mean I saw them together and got the impression; I went over into New Jersey and took a drive to look at this railroad, thinking to buy me some land on the line of its road; I went particularly to Pompton; and I thought the bonds were cheap.

Q. At the time of this sale and purchase did you confer with the railroad officers about it?

A. No, sir.

Q. Did you see Mr. Pratt in regard to it?

A. No, sir.

Q. Nor Mr. Culver?

A. No, sir.

Q. Do you know Mr. Culver?

A. No, sir; some one told me these bonds were good bonds and would be sold cheap.

132 Q. Give his name.

A. Guest.

Q. William A. Guest?

A. Yes, sir; some one told me, I think, it was him.

Q. The gross amount you paid for the whole was $36,030?

A. Yes, sir.

Q. Did the auctioneer have possession of the bonds?

A. He displayed one or more bonds when I was bidding.

Q. Did he deliver them to you?

A. No, sir.

Q. Who delivered them to you?

A. E. D. Morgan & Co.

Q. And you settled with them for the amount, did you not?

A. It was charged to me.

Q. Charged to you?

A. Yes, sir; they seemed very glad to do it.

Q. It will be well enough if you will answer the question. I see this bill which you produced——

A. Mr. Gummere produced it, if you please; I did not.

Q. You handed it to me.

A. You asked me for it.

Q. Do you know what it is?

A. A bill, sir, from Mr. Muller.

133 Q. Did you receive that at the time of the purchase?

A. It was handed to me—not at the moment of the purchase.

Q. It came in due course of business, as the bill of Muller and Son for the sale of the bonds?

A. Yes, sir; that seems to correspond with my memorandum of prices.

Q. And that is the invoice, if I may so speak?

A. Just that exactly.

Q. I see that says, "Purchase-money collected and bonds delivered by you?"

A. Yes, sir.
Q. That is made out to E. D. Morgan & Co.?
A. Yes, sir.
Q. That is the report of sales?
A. Yes, sir; it is the customary way.
Q. Mr. Dana, are not E. D. Morgn & Co., or were they not at the time of the purchase, interested in any surplus that might be realized over and above the amount you paid for those bonds?
A. You can settle that. Suppose I am a bankrupt; they would be interested in the surplus, would they not?
Q. I do not think you understand my question. You bought these bonds for $36,030?
134 A. Yes, sir.
Q. There were 64 bonds?
A. Yes, sir.
Q. $64,000. Now, the question is, whether E. D. Morgan & Co. were not interested in any surplus you might realize on those bonds over and above what you paid for them at that sale?
A. I never had a word of conversation on the subject. I know nothing about it.
Q. Was there any conversation or understanding?
A. There was not, sir.
Q. One moment. You must not jump before you come to the fence, you know. Was there not any conversation or understanding between you and E. D. Morgan & Co., or any person on their behalf, that they were in anywise interested in the purchase of those bonds?
A. None.
Q. Do you say that you had on deposit at that time with E. D. Morgan & Co. funds, balance sufficient to pay the amount of those bonds?
A. I do not.
Q. How soon after the transaction with Muller did you receive the bonds from E. D. Morgan & Co.?
A. Probably next day or day after.
Q. Was it as soon as the next day or day after?
135 A. I have no recollection of the precise moment.
Q. Can you name any time within which you are sure they were delivered to you?
A. I am sure I took them out of my box when I went to Europe; this suit was to come on two years ago, and I gave them to a friend to keep in another box at the Exchange, that they might be got at for this suit. I cannot remember any particular date when I received them. I presume I received them in due course.
Q. And that would be how soon?
A. Any time after that that I chose to call and get them.
Q. And if you chose to leave them there until they were wanted for this suit, that would be as much in due course?
A. If I would trust them with both——
Q. Can you tell us how long they did remain in the possession of E. D. Morgan & Co., after that purchase?
A. No.
Q. When you had them in your box, where were they?

A. In the Stock Exchange.
Q. Did you keep your box with E. D. Morgan & Co.?
A. No, sir.
Q. Where was their place of business?
136 No. 24 Exchange Place. Allow me to mention these boxes that we have at the Stock Exchange; they are little safes, each one has for himself. I do not mean a box to carry to a bank, but a box in the receiving vault of the Stock Exchange.
Q. Can you tell us how soon after September, 1873, they were put in that box?
A. I cannot.
Q. But the first recollection you have of them is, that they were taken out when you went abroad?
A. Yes, sir.
Q. When was that?
A. In 1875 and 1877—each year.
Q. When you went in 1875?
A. I think I took them out of my box then, and had them deposited by a friend in another box. Mr. Gummere gave me to understand the suit was to be tried some time or other.
Q. I want to find out if I can when you first got possession of those bonds?
A. I cannot tell you. I have had possession of them for some years.
Q. You say that when you were about going to Europe you took them out of your box and put them in some one else's box.
A. I beg pardon, I gave them to Mr. Smith.
137 Q. Mr. Sereno Smith?
A. Yes, sir; to put them in their box in the Exchange.
Q. Whose box did he put them in?
A. E. D. Morgan & Co.'s. Perhaps I should add also that he put $4,000 of bonds in their box, which I thought might be needed while I was gone.
Q. How long did the bonds remain in E. D. Morgan & Co.'s box?
A. I got home in October or November, and when I wanted the bonds I had them taken out, and took out my other bonds and sold part of them.
Q. I wish you would confine yourself to answering my questions?
A. I will answer the questions as well as I can.
Q. Then when you were going away, and thought that these bonds now in suit might be used in your absence, they were put in E. D. Morgan & Co.'s box, were they?
A. I suppose so.
Q. Don't you know?
A. No, sir.
Q. Don't you know so?
A. No, sir; Mr. Smith, I know, had the key to that box to go to it for Gov. Morgan——(Interrupted.)
138 Q. When you say Gov. Morgan, you mean E. D. Morgan & Co.?
A. Yes, sir; and other private matters.
Q. He is a clerk of E. D. Morgan & Co., is he not.

A. Yes, sir; but he is a responsible man. Mr. George Morgan has just gone to Europe——(Interrupted.)

Q. I don't want to know about that. I want to ask you whether it was not E. D. Morgan and Co.'s box?

A. Yes, sir.

Q. Then you went again in 1877?

A. Yes.

Q. And was the same process again gone through then about these bonds? Did Mr. Smith come and get them?

A. I presume so.

Q. And they were taken charge of by him, and put in E. D. Morgan & Co.'s box until you came back?

A. I presume so.

Q. Did they not remain there until they were brought here?

A. No, sir,

Q. When were they put in your hands?

A. I cannot tell the date. I delivered them to Mr. Smith when Mr. Gummere informed me this suit was to come on, which was four
139 or five weeks ago. I think he notified me, and I didn't want to take custody of them.

Q. Why?

A. I thought I might be over here and lose them.

Q. Why was Mr. Smith a proper custodian?

A. He attends to matters for me.

Q. He is a clerk of E. D. Morgan & Co.?

A. Yes, sir; but he attends to many matters for me; often makes purchases for me, and attends to many matters for me.

Q. That is the way it came about, is it?

A. Yes, sir.

Q. That will do.

Redirect examination:

Q. You say you kept an account with E. D. Morgan & Co. for a good many years?

A. Yes, sir.

Q. What are your balances in their hands ordinarily? How high do they run?

A. Oh, I don't know, sir; I may owe them money, or they may owe me money; I don't know.

Q. I don't mean now, but how high are your balances in their hands, or have you ever had a balance?

A. Well, I have no idea, sir; I have not settled an account there for many years, but I pay in money, and if I want to withdraw it I can, or keep an interest account.

140 Q. Do they render you statements of account?

A. On occasions—no particular time.

Q. When was your last settlement handed to you?

A. I do not know; I think I had one sent to me in the country; I was up at Mt. Desert, and I think they sent me one.

Q. When did they pretend to charge this $36,000?

(Defendants' counsel objected on the ground that the paper would show for itself.)

Q. I will ask you this question, then: Has the amount been debited, do you know, on your account with E. D. Morgan & Co.?

(Defendants' counsel objected to this question as calling for the contents of a book.)

WITNESS. I should not answer the question. I have no knowledge whether it has been charged to me or not.

Q. (Handing witness a paper.) Please to look at that.

(Witness examined paper.)

141 Q. Is that the order for the payment which you gave upon E. D. Morgan & Co. at the time of the purchase?

A. It is.

Q. And that is your signature, please read it.

Witness read as follows:

E. D. MORGAN & Co.:

Please pay A. H. Muller & Son for sixty-seven thousand dollar bonds bought of them this day, upon their delivery to you of said bonds, and charge the same to

CHARLES DANA.

SEPTEMBER 17TH, 1873.

Q. Who did you give that to?

A. Muller & Son at the time that I bought the bonds.

Q. And that order you have paid?

A. I have.

Recross-examination:

Q. How did you pay that?

A. Cash.

Q. Do you mean to say that you went to E. D. Morgan & Co. with bills and took up this order?

A. I deposited it on that order.

Q. When?

A. At various times.

Q. Do you mean that you made a specific deposit to apply to this order?

A. No, sir.

142 Q. You mean you have made deposits from time to time?

A. Yes, sir.

Q. And you never have settled with E. D. Morgan & Co. since then?

A. If you will allow me to ask you, what do you mean by settled—paid them the money?

Q. I don't know; if you don't know I am sure I don't.

A. Well, a settlement is striking the balance and paying that balance; my accounts have run for years, some time one way and some time another, if you call that a settlement.

Q. Since September 17th, 1873, have you had any specific transactions with E. D. Morgan & Co. in regard to those bonds since giving this order?

A. I deposited more than money enough to pay the order; do you mean that?

Q. You have deposited more than money enough to pay the order?

A. Yes, sir, and it has been credited to my account.

Q. And you have drawn also against E. D. Morgan & Co.?
A. Yes, sir, for various amounts.
Q. And you do not know how the account stands?
143 A. I have a general knowledge; I do not know accurately.
Q. Have you a book-keeper?
Q. No, sir.
Q. Do you keep any accounts yourself?
A. Very few.
Q. Did you keep any book account of this transaction or any memorandum of it?
A. I did.
Q. At the time?
A. I presume so.
Q. Where is that account?
A. I do not know, sir.
Q. Now, this order directs E. D. Morgan & Co. to pay to A. H. Muller & Son for sixty-seven thousand dollar bonds bought of them this date upon their delivering to you said bonds and charge the same to Charles Dana. How would E. D. Morgan & Co. know how much to pay to for those bonds by this order?
A. I went to E. D. Morgan & Co., and told them the bill would be rendered. I could not tell exactly the day of the sale what the amount would be, until the bill, or, as you call it, the invoice, was made out.
Q. Why could you not tell?
144 A. It would be impossible for any man to tell unless he had a better head than I have.
Q. You say you had this advertisement and memorandum, and you could not tell what the amount of the bonds would come to?
A. No, sir; not without the bill.
Q. Then this bill was not delivered to you at all.
A. Not at that time. I saw the bill afterwards, before the money was paid.
Q. You saw it at E. D. Morgan & Co.'s, did you not?
A. I was up to Muller's, I think I saw the bill there.
Q. Was the bill ever delivered to you at all?
A. Yes, sir.
Q. Then why did you give an order before you got the bill?
A. Mr. Muller & Co. had made a large sale, and wanted something—that was their custom I believe—to show for it; receive some part of the payment; I believe they sent down to ask if I was good for the amount.
Q. I do not want assumptions; I want to know why you gave the order before you got the bill?
A. It was customary, that is all I can say.
145 Q. This was then a request that E. D. Morgan & Co. would pay for the bonds upon their being delivered to them; now did you suppose when you signed that Muller would deliver the bonds to E. D. Morgan & Co.?
A. Upon receiving pay for them.
Q. Did you not know the bonds were sold on account of E. D. Morgan & Co.?
A. Yes, sir.

Q. Did you suppose that the auctioneer would receive them and deliver them back again to E. D. Morgan & Co., and receive pay for their own bonds?

A. They had part of the bonds, but I don't know where they actually were—they had part there at the time of the sale. E. D. Morgan & Co. did owe me some money; they having the bonds, were secured for any money they might pay.

Q. Did you expect Muller to deliver the bonds to E. D. Morgan & Co.?

A. He had part in his hands then; I don't know where the rest were; it would not be customary——(Interrupted.)

Q. That is enough; you need not again. You supposed Muller would deliver the bonds to E. D. Morgan & Co. at the time?

A. Undoubtedly.

146 Q. Where did you first see the bill that was made out by Muller for those bonds?

A. I cannot tell you.

Q. Was not the bill sent to E. D. Morgan & Co.?

A. It would necessarily be.

Q. Would not that be in due course of business, to send the bill to E. D. Morgan & Co. after that order?

A. It would be without any order. They must send to their correspondents.

Q. This is a report of sale—not a bill. Did you get any bill at all?

A. Only that.

Q. The report of sale would be sent to E. D. Morgan & Co.?

A. Yes, sir.

Q. You did not get any bill?

A. I got that bill from E. D. Morgan & Co., the same answered as a bill for me; I had another bill, I think; but I cannot tell which one was handed to me; it was a duplicate of that, I presume.

Q. I believe that is all.

Further redirect examination:

Q. Mr. Dana, to what extent annually do the operations of your deposits and drafts on E. D. Morgan & Co. amount; give us an idea of
147 the extent of your operations; you say you keep an account there—give us a general idea of the extent of your deposits and drafts on E. D. Morgan & Co. during the last ten years?

A. It would be impossible—it would be many hundred thousand dollars.

Q. They have been very large and varied?

A. I do not call it large, I call it small; but it would be many hundred thousand dollars.

Q. Are you in the habit of buying bonds and so on, and making these investments?

A. If I see a thing I think cheap, and if I have any ready money or money at my command, I have done these things.

Q. This is not the only occasion; you have bought various other bonds of this kind?

A. I suppose so.

Q. County, town, and other bonds?

By Mr. McCarter. Will you repeat that question?

By Mr. GUMMERE. I asked him if he was in the habit, of buying stocks and bonds at sales, and I understood that he was, and had bought county bonds.

148 WITNESS. You do not state the question exactly. You asked me if I was accustomed to buy bonds at various times; I am. I have done it many times, I buy railroad bonds.

Further recross-examination:

Q. Did you ever before this buy any township bonds?

A. Yes, sir.

Q. What township?

A. I bought four or five township bonds in Illinois a few years ago, several years ago, and then bought city of Hanover bonds—I would like to refresh my memory.

Q. Did you ever deal before this in any bonds issued by townships in aid of the Montclair Railroad?

A. No, sir.

Q. Your attention was called to the time you think you heard of the sale.

A. The day, or the day before, I should think.

Q. And you went to E. D. Morgan and Co. to find out about it, did you not?

A. No, sir.

Q. How did you get in connection with E. D. Morgan & Co., or Terry, or whoever it was?

A. I presume I met Mr. Terry in the office.

149 Q. Whose office?

A. E. D. Morgan & Co.'s office.

Q. Then you did go there?

A. I stated that.

Q. I understood you to say you did not go there?

A. Oh, no.

Q. Did you know before you went there that these bonds were being sold on their account?

A. Before I went to the sale?

Q. Before you went to Terry—you say you saw Terry in his office?

A. I do not think I did; I don't know.

Q. Had you any idea of buying the bonds until you went to Terry?

A. Well, I don't think I had; but you are getting it wrong in your questions, I did not go to him, he and I met in the same office.

Q. You were in his office?

A. Yes, sir.

Q. And you must have got there somehow—you went there?

A. Yes, sir.

Q. I have heard you say you did twice; did you go there, or did you not?

A. My desk is not ten feet from his.

Q. In the same office?

A. Yes, sir.

Q. Then you have a desk in Mr. Terry's office?

150 A. I have got a desk in Gov'r—yes, sir.

Q. In E. D. Morgan & Co.'s office?

A. Yes, sir; I was a tenant of Governor Morgan's overhead, and they moved down.

Q. Did you not go to the sale with the express purpose of buying those bonds?

A. Most undoubtedly.

Q. All the business you have, is it not, is watching these sales and purchasing when you think you have a chance of speculating?

A. That is not my business; I do watch sales, and make purchases. I am not in active business.

Q. That is all.

And thereupon the plaintiff's counsel, in further support of the issue on his part, called as a witness WILLIAM F. REDMOND, who, being duly sworn, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Where do you live, Mr. Redmond?

A. Brooklyn, N. Y.

Q. Were you in 1873 a clerk in the employment of A. H. Muller & Co.—or Son?

A. I was, sir.

Q. (Handing witness a paper.) Do you recollect the sale of the bonds mentioned in that report of the sale?

151 A. I do.

Q. Were you the clerk having particular charge of the department of sales?

A. I am.

Q. Whose handwriting is that?

A. Mine.

Q. This is in your handwriting?

A. Yes, sir.

Q. (Handing witness a paper.) Is that one of the advertisements issued by A. H. Muller & Son of that sale?

A. Yes, sir; that is one of our regular stock auction catalogues.

Q. How otherwise was this sale advertised?

A. It was advertised in the Evening Post of the 15th and 16th of September, 1873, the Journal of Commerce 15th, 16th, and 17th of September, 1873, and The World on the same dates.

Q. What is your average time of advertising sales?

A. That is the average time.

Q. I see part of a printed slip also—is that one of the advertisements in one of the newspapers?

A. That was taken from a paper. This (referring to advertisement) is what we call our regular auction head, and we put sales under that from day to day.

152 Q. Is this from one of the papers as it was published?

A. That is from the New York World.

Q. (Handing witness a paper.) Please look at this order.

A. (Witness examined a paper.)

Q. Now when you have made a sale to a man, what do you require of him in order to close the sale?

(Defendants' counsel objected to this question as incompetent.

Question overruled.)

Q. Whose handwriting is that order in?

A. That is in the handwriting of a clerk in our store by the name of McCormick.

Q. Why was that required of Mr. Dana?

A. Well, Mr. Dana being the purchaser, he probably came into the office—not writing this, of course I cannot say.

By Mr. McCARTER (to witness). State what you know about it—probabilities and conjectures are not competent.

153 Q. Would you recollect such an order from a buyer?

A. Probably Mr. Dana said to us——(Interrupted.)

By Mr. McCARTER: I object to that, unless the witness remembers.

By the WITNESS. I remember taking this paper to E. D. Morgan & Co.

By Mr. McCARTER. Yes, that is right; what Mr. Dana said is another matter.

By the WITNESS. Mr. Dana presented this order at our office, and we took it to E. D. Morgan & Co.'s office, and I saw Mr. Smith, clerk in their office; he went in and saw Mr. Terry; Mr. Terry came out and stated as they knew Mr. Dana and they would deliver the bonds, receiving the money from him. This is very often done in such cases; that does
154 away with bringing the bonds to the office of the auctioneer, and is frequently done.

Q. And that was done on this occasion?

A. On this occasion.

Cross-examination by Mr. McCARTER:

Q. Where were the bonds at that sale?

A. We had a sample of the bonds of the Township of Montclair, and Township of Woodside.

Q. Now will you be good enough to pay attention to the question and answer it. I ask you where the bonds were when they were sold?

A. I presume they were at E. D. Morgan & Co.'s office; he was the party who gave us the order.

Q. You did not have them?

A. No, sir, we did not have them, we very seldom have bonds when we sell them.

Redirect examination:

Q. You say you had a sample of each bond?

A. Yes, sir, which was sold at each sale.

Q. Is that the usual practice?

A. The usual practice—with outside securities?

155 Q. The usual practice is for you to take nothing but samples of these outside securities?

A. Yes, sir.

Recross-examination:

Q. Do you never deliver the bonds?

A. We generally deliver them.

Q. Then it is not the usual practice to sell by sample.

A. I did not say it was the usual practice.

Q. Mr. Gummere got you to say it, but I did not suppose you meant it; you usually do deliver the bonds?

A. Yes, sir.

Q. And receive the money?

A. Yes, sir.

Q. And account to the principals?

A. Yes, sir.

Q. This, then, was not done in the usual way?

A. Well, I cannot say the usual way; it was done as it was very often done.

Q. That is all.

Plaintiff's attorney offered in evidence Mr. Dana's order on E. D. Morgan & Co., in favor of Muller & Son, for the purchase-money of the bonds, dated Sept. 17th, 1873, marked Exhibit No. 2, for Plaintiff.

156 Plaintiff's attorney also offered in evidence the auctioneer's bill of sale for the bonds in suit, which was marked Exhibit No. 3 for Plaintiff.

Plaintiff's attorney also offered in evidence auctioneer's advertisement in the newspaper, The World, and the auctioneer's hand-bill advertisement or catalogue, and the same was marked Exhibit No. 4 for Plaintiff.)

By Mr. GUMMERE. I call on the defendants to produce the petition to the judge of the Essex circuit court for the appointment of commissioners for the township of Montclair, pursuant to the provisions of the act of April 9th, 1868, and the order made by the judge appointing commissioners for that township under the same act.

By DEFENDANTS' COUNSEL. We have no knowledge that any such papers exist, or were ever made.

157 By PLAINTIFF'S COUNSEL Then, I ask them to admit they are not to be found in the town records, and are not in the possession of any of their town officers.

By DEFENDANTS' COUNSEL We have no knowledge of any such papers.

By PLAINTIFF'S COUNSEL. Then I call upon them to purge themselves under the order of the court. They are here under peremptory order to produce on this trial these papers. Now, I ask them to admit they are not in their town records or in the possession of their town officers, or to purge themselves under the order.

158 By DEFENDANTS' COUNSEL We cannot produce the papers.

By the PLAINTIFF'S COUNSEL. That is no purging under this order. You are here under an order to produce them. Your saying you cannot produce them is nothing. When I ask you to admit they are not in your town records, and not in the custody of any of your town officers you decline to admit it.

By DEFENDANTS' COUNSEL. We say we have no knowledge of the existence of any such papers.

By PLAINTIFF'S COUNSEL. Your knowledge amounts to nothing. I don't care about your knowledge, it is the defendants; you have either got to admit them, or show they are not in the custody of any of your officers.

159 By DEFENDANT'S COUNSEL. I understand you call npon us to admit there are no such papers in the possession of the town officers.

By PLAINTIFF'S COUNSEL. I call on you to produce them, or admit they are not to be found in the town records, or are not in the custody of the town officers.

By DEFENDANTS' COUNSEL. We admit that, as far as we know—there are 15 to 20 town officers—and we admit we have no knowledge of any such papers, and have made search for them among the town papers, and cannot find them, and we believe they never were among the town papers. We have no knowledge of the existence of any such papers, and cannot produce them, because they are not in our possession, and we never had them. Does counsel want any fuller admission than that?

160 By PLAINTIFF'S COUNSEL. I want you to admit the petition and order are not to be found in the town records, and are not in the possession of any of your town officers, and therefore you cannot produce them.

By DEFENDANTS' COUNSEL. We admit this, we have been called upon to produce those papers, and have caused all the investigation we can to be made of the town records, and have examined the town officers, whose duty it would be to have those papers, and we have not found them, and have not got them under our control in any way, and we have no knowledge they ever had any existence.

And thereupon the plaintiff, in further support of the issue on his part, called as a witness DELOS E. CULVER, who, being duly sworn, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Mr. Culver, were you president of the Montclair Railway Co.?

A. At one time.

Q. Do you recollect the time during which you were president?

161 A. I think about some time in the spring or early summer of 1873; I cannot recollect with certainty.

Q. How long did you continue president?

A. I think during the existence of the company.

Q. You were subpœnaed to produce here the petition for the appointment of commissioners for the township of Montclair and the order for their appointment by the judge of the circuit court of Essex County; do you produce the petition and order?

A. No; certainly not. I have not the custody of any such papers.

Q. Have you ever seen them?

A. Not to my knowledge.

Not cross-examined.

And thereupon the plaintiff, in further support of the issue of his part, called as a witness JULIUS H. PRATT, who, being duly sworn, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Mr. Pratt, were you president of the Montclair Railroad?

A. I was at one time.

162 Q. From what time to what time?

A. From 1869 to the spring of 1873.

Q. You were subpœnaed to produce a petition for the appointment of

commissioners for the township of Montclair, under the act of April 9th, 1868, and the order of the judge of the Essex County circuit court for the appointment of those commissioners; do you produce them?

A. No, sir; I have been unable to find them.

Q. Have you made search for them?

A. I have.

Q. And not been able to find them?

A. No, sir.

(Handing witness a paper.)

Q. Mr. Pratt, will you look at this? (Witness examined the paper.) Whose is the signature as maker of that note?

A. I signed the note as president of the Montclair Railroad Co.

Q. Will you examine the endorsement of the note?

A. (Witness did so.)

Q. Whose endorsement is that?

A. The endorsement of D. C. Littlejohn, president of the New York and Oswego Midland Railroad Co.

163 Q. Are you acquainted with his signature?

A. Yes, sir.

Q. Whose signature is that?

A. It is the signature of Mr. Littlejohn.

Not cross-examined.

Plaintiff's counsel offers in evidence a note dated New York, April 25th, 1873, made by Julius H. Pratt, president of the Montclair Railroad Co., in favor of the Oswego and New York Midland Railway Co., payable 4 months after date, for the sum of $50,000, endorsed by the New York and Oswego Midland Railway Co., D. C. Littlejohn; also, these further words: Having deposited with as collateral security, with authority to sell the same at the brokers' board, or at public or private sale at auction on the non-performance of these terms, and without interest, sixty-four thousand dollars township bond, Montclair, N. J. (numbering them), and three bonds of $1,000 each of the township of Woodside, and the same

164 was marked Exhibit No. 5 on behalf of the plaintiff.

And thereupon the plaintiff, in further support of the issue on his part, called as a witness MASON LOOMIS, who, being duly sworn, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Mr. Loomis, were you one of the receivers of the Montclair Railway Co.?

A. Yes, sir.

Q. When were you appointed?

A. In July, 1873; I think 23rd July.

Q. Were you subpœnaed to produce a petition for the appointment of commissioners under act of April 9th, 1868, for the township of Montclair, and the order of the judge of the Essex County circuit court to appoint commissioners; can you produce them?

A. No, sir.

Q. While you were receiver did you examine papers of the Montclair Railway Co.?

A. Yes, sir.

Q. Did you receive all those papers from the company?
A. Well, I suppose so; of course I cannot tell.
165 Q. And they all passed through your hands personally?
A. Yes, sir.
Q. Did you find any such petition or order?
A. No, sir; no such paper.
Q. This Montclair Railway Co., is it actually built through the township of Montclair?
A. Yes, sir.
Q. From the town of Montclair to the Hudson River?
A. Well, it stops short of the—the Montclair Railroad does stop short of the Hudson River; it connects with the railroad called the Hudson connection for Jersey City.
Q. It has connection all the way?
A. Yes, sir.
Q. Do you know George S. Dwight?
A. Yes, sir.
Q. Where is he now?
A. Well, according to report, he is in Europe.
(Defendants objected to this last answer.)
Q. Where does he live?
A. In Montclair.
Q. Have you seen him about?
A. No, sir.
166 Q. Been absent how long?
A. Three weeks; perhaps a little more.

Cross-examination by Mr. McCARTER:

Q. Where is that road; what of the Montclair road was built?
A. What portion of it?
Q. Yes; what was built under the charter of the Montclair Railroad?
A. From a point near the Hudson called Hen Point Peck, in the county of Hudson. The Montclair Co. didn't build the entire length; they built up in the county of Passaic to Monks, a station near Monks, about 6 miles eastward of Greenwood Lake.
Q. Through what townships does it run?
A. Through the townships of Kearney, in Hudson County, the township of Woodside, the township of Bloomfield, the township of Montclair, Little Falls; Wayne, Pequamock came to Pompton, and passes through it.
Q. Monks, you say, is as far as has been built by the Montclair Railroad Co. proper?
A. As far as the track has been laid.
Q. And Monks is in Pompton Township, about 6 miles south of Greenwood Lake?
167 A. Yes, sir. The line between West Milford and Pompton is near that point. I think it is in the township of Pompton.
Q. You were engineer of that road, were you?
A. One of them.

By agreement between counsel it is admitted that Garret A. Holan, receiver of the Montclair and Greenwood Lake Railroad Co., who were the

successors of the Montclair R. R. Co., has search' for the petition and order among the papers of the Montclair Railroad Co. which came into his possession, and cannot find them.

And thereupon the plaintiff, in further support of the issue on his part, called as a witness WILLIAM O. MCDONALD, who, being duly sworn, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Were you secretary of the Montclair and Greenwood Lake Railroad Co.?

A. I was.

Q. As such secretary did you receive from the receivers of the
168 Montclair Railroad Co. the papers of the Co.?

A. I did.

Q. They were sold by the receiver, were they not?

A. They were.

Q. And bought by your company?

A. Bought in on behalf of our company.

Q. You were subpœnaed to produce the petition and the order for the appointment of commissioners for the township of Montclair. Have you searched among those papers for that petition and order?

A. I have.

Q. Did you succeed in finding them?

A. I did not succeed.

Q. Have you since that made search among the papers in the possession of Garret A. Hobart?

A. Not personally.

Q. Did you go there for that purpose?

A. I went there for that purpose, an' search was made, and the report brought that the papers were not there.

Q. Search was made by whom, Hobart or his clerk?

A. By the cashier employed by Mr. Hobart.

Q. What co. was Mr. Hobart receiver of?

A. Montclair & Greenwood Lake Railroad Co.

169 Cross-examination by Mr. MCCARTER:

Q. The papers of the Montclair Railroad Co., you say, were sold by the receiver?

A. Yes, sir.

Q. Who bought them?

A. They were bought in by the trustee of the 1st mortgage, and turned over by him, or under his order, to the receiver of the Montclair & Greenwood Lake Railroad Co.

Q. Who was that?

A. Abram S. Hewitt.

Q. And he bought the books, too?

A. Yes, sir.

Q. And turned over everything?

A. Yes, sir.

Q. Books and all?

A. Yes, sir.

Q. How do you know he turned over everything he received?
A. I received them.

And thereupon the plaintiff, in further support of the issue on his part, called as a witness WALTER S. SPALDING, who, being duly sworn, on his oath says:

170 Direct examination by Mr. GUMMERE:

Q. Are you the son of Henry C. Spalding?
A. I am, sir.
Q. Where is he now?
A. In Europe.
Q. How long has he been absent?
A. Somewhat over a year.
Q. You were subpœnaed to produce here a petition and order for the appointment of commissioners of the township of Montclair, under act of April 9th, 1868. Have you made search among your father's papers for the purpose of finding them?
A. I have, sir.
Q. Can you produce them?
A. I cannot.
Q. Were you not able to find them?
A. I was not.

Cross-examined by Mr. MCCARTER:

Q. When did your father go to Europe? You say a little over a year ago. Please state more distinctly.
A. He went a year ago last July. I cannot state the exact date.
171 Q. That is all.

Redirect examination:

Q. And he has never been back since?
A. No, sir; that is the last time he went.

Plaintiff's counsel offered in evidence, by agreement between counsel, the evidence given in the suit wherein Thomas Ramsdall is plaintiff, and The Inhabitants of the Township of Montclair, defendants, the testimony given on that trial by Cortland Parker, Anthony Q. Keasby, and David A. Depue.

By the COURT. Is it admitted by the counsel that the stenographer's notes in that trial should be used in this?

Counsel stated that was the understanding.

And thereupon the evidence of Courtland Parker, Anthony Q. Keasby, and David A. Depue, as agreed upon, was read from the stenographer's notes as follows:

172 CORTLAND PARKER, a witness called on behalf of the plaintiff, being duly sworn testified as follows:

Direct examination by Mr. RANSOM:

Q. Mr. Parker, you are an attorney and counsellor at law?
A. Yes.
Q. And your office is in Newark?
A. Yes.
Q. In the year 1870 you remember the bonding of the township of Montclair?

A. I have an indistinct remembrance that that matter was done, and that it was carried through to some extent in our office, the office of Parker & Keasby, and under my special charge.

Q. Did you act as counsel and attorney for the township of Montclair, or for any person or persons or corporation, as you remember, for the purpose of carrying through the execution of the bond of that township in aid of the Montclair Railway Co.?

173 A. I acted at the request of parties interested in the Montclair Railway. Whether I was likewise called upon by persons interested in behalf of the township of Montclair, I am not very clear, though my impression is that I was. I was not retained as counsel for the township of Montclair, but I think both sides relied upon me to get that matter right.

Q. Did you, as attorney for the railway company, or for the town of Montclair, or whoever employed you, according to your recollection, present any application in regard to the bonding of that town to Judge Depue; if so, what application did you thus present?

A. I have no recollection that I presented the application. I am as positive as I can be, without such recollection, that some application was made.

Q. You are not able to state whether you made it or not?

A. I am not able. If I should give an impression, it is that I did not; that it was made by Mr. Keasby.

Q. Were any papers prepared under your personal direction and supervision upon which the application to Judge Depue was based?

174 A. If I would be presented with the paper, I could see at once, and my memory would be refreshed. I am satisfied that I drew myself certain papers connected with that matter, and took great pains to get them through, but whether they were papers antecedent to the application to Judge Depue perplexes me.

Q. You do not remember that you prepared any papers upon which the application was made to him?

A. I do not remember. If counsel would give me, as short as possible the procedure itself, possibly I might recall this matter.

Q. I hand you the first section of the bonding act, on the right hand page, Mr. Parker, at the bottom of the page.

WITNESS. I cannot say that I prepared the first paper required by this act, "The application in writing of twelve or more freeholders," nor that I presented it to the judge, though, as I have said, I am quite certain that both of those things were done, and feel sure that I supervised it. I have a strong impression that the consent of other freeholders, that is, persons owning, or representing as agent or president, at least two-

175 thirds of the real estate and landed property of such township, town, or city borne on the last assessment roll thereof, at the valuation therein appearing, shall have been obtained, &c., I have a strong impression that the consent was more directly under my own hand. If I had been told what I was wanted for in this thing, it is quite possible I could have answered with more accuracy, for I remember that the getting of this thing right was imposed very considerably on me, and appears on my memorandum of charges.

Q. In aid of your recollection in that regard, a subpœna describing some papers which it was thought possible you might have in your possession was served upon you, was it not?

A. Yes; but I have no such papers.

Q. Those were the papers I expected you might tell us something about.

A. That was not told me. I was asked to bring a paper.

Q. Have you searched for the papers mentioned in the subpœna, described as the petition and order for the appointment of commissioners on the petition of twelve freeholders?

176 A. I have not searched for them, because I know I have not got them.

Q. As a fact, then, within your recollection, are you able to say whether Judge Depue acted upon any application which was presented to him by your office?

(Objected to by Mr. McCarter.)

A. As the question is put I must answer it in the negative. It is not a fact in my recollection; it is a fact in my conviction.

Q. Was that paper prepared in your office? (Handing to witness bond already in evidence.)

A. That paper is in the handwriting of a clerk in my office. I never did it.

(Paper referred to marked Plaintiff's Exhibit, A.)

Q. Was this paper presented to Judge Depue?

A. It seems so by the signature at the top.

Q. This endorsement on the back of it is in his handwriting?

A. The whole of it is. The signature is undoubtedly his.

Mr. RANSOM. I ask right here to have the endorsement on this

177 bond marked by the court as an exhibit for the plaintiff.

(The endorsement is accordingly marked Plaintiff's Exhibit, B.)

Cross-examination by Mr. MCCARTER:

Q. Who, if anybody, employed you in this business on the part of the township of Montclair?

A. I cannot recall.

Q. Can you state that anybody representing the official authorities of the township employed you concerning it?

A. Giving the dictionary meaning of the word "employ," no.

Q. Who paid you for your services in the business of which you have spoken?

A. I suppose I was paid by the Montclair Railway Company. I do not think I was paid.

A. Q. KEASBEY, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. RANSOM:

Q. You are a lawyer, Mr. Keasbey?

A. Yes, sir.

178 Q. The partner of Mr. Parker, the last witness?

A. I was until within a year.

Q. You were a partner of his until, or rather in, the year 1870?

A. Yes, sir.

Q. (Handing witness paper.) Do you remember if this paper, Exhibit A, on the part of the plaintiff, was prepared in the office of Parker & Keasbey?

A. I do, sir.

Q. Did you, personally, have anything to do with regard to the preparation of any of the papers having reference to the bonding of the township of Montclair?

A. Do you want to know what I had personally to do with the preparation of this paper?

Q. Yes.

A. I cannot state positively whether I had personally to do with the preparation.

Q. Well, give your best recollection on that subject.

A. Whether I had personally to do with the preparation of this paper?

Q. Yes, sir.

A. The actual writing?

Q. If you had anything to do with it, would be either the prep-
179 aration of it or the consideration of its preparation.

A. I had much to do with the preparation of papers, but whether with the actual preparation of them or not I cannot say.

Q. You were subpœnaed to produce the petition of twelve freeholders of the township of Montclair for the appointment of three commissioners under the act of the legislature of the State of New Jersey, and also an order of the circuit court of Essex County appointing Robert M. Hening, Jared E. Harrison, and Hiram B. Littell to be said commissioners; and also certain other papers—consents. Calling your attention to the petition and order, I ask you now to state whether or not you have such papers in your possession.

A. I have not.

Q. Have you ever seen such papers?

A. I have.

Q. When and where did you see them, Mr. Keasbey?

A. They were in my possession at the time they were presented to Judge Depue, and were received by me, I think, already prepared (I am speaking now of the petition), from Mr. Spaulding.

Q. Who presented those papers to Judge Depue?

180 A. I think I did. I feel quite sure of it. I know I had this bond and presented that to him. I find two words in it written in pencil in my handwriting, which was undoubtedly written at the time.

Q. At the time you presented the petition and order to Judge Depue, what did he do with them; what disposition did Judge Depue make of the papers?

A. He made no judicial disposition——

Mr. McCarter. I object to the "judicial disposition."

Q. What did Judge Depue do with the papers?

A. As nearly as I can remember, at this distance of time, he took the papers for consideration and retained them for some examination into the sureties proposed on the bond. I know that the appointment of the commissioners was a matter of considerable consideration and anxiety on his part.

Q. Well, finally, what did he do with the papers?

A. He approved this bond and appointed the commissioners.

(Objected to by defendants' counsel, as not responsive and
181 illegal.

WITNESS. "To do with the papers?" If you ask what he physically did with the identical papers, is that what you mean?

Q. I will put the question to you in this way: Did he return those papers to you?

A. I think he did.

Q. He returned the papers to you?

A. Yes, sir.

Q. Was that order signed or unsigned when he returned the paper—the order—to you?

A. If I am right in saying he returned it to me, which I believe was the case, it was signed.

Q. By him?

A. By him.

Q. And that was the order which was mentioned in the bonding act?

Mr. MCCARTER. The contents of the order must be proved in some other way.

Mr. RANSOM. It is descriptive simply of the paper to identify it. I don't know that it goes to prove the contents of the paper.

182 The direct examination of Mr. Keasby is temporarily suspended.

Judge DAVID A. DEPUE, a witness produced on the part of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. RANSOM:

Q. Were you judge of the Essex County circuit court in the year 1870?

A. I was, sir.

Q. (Paper handed witness.) Do you recollect an application having been made to you for the appointment of commissioners for the township of Montclair, under the act of April 9th, 1868, for issuing bonds in aid of the Montclair Railway Company?

A. I don't remember the fact of an application being made as the facts connected with an application. I remember distinctly the fact of making an appointment of commissioners under the same act in relation to the Montclair Railway Company, and that Robert M. Henning was one of those commissioners.

Q. Perhaps your recollection would be aided by reading the final
183 section of this act of 1868, to which I call your attention. It says, "That on the application, in writing, of twelve or more freeholders the residents of any township, town, or city." (At this point the counsel handed act to the witness to read.) Now, after you have read that, and looking at this bond given by Robert M. Hening, Hiram B. Littell, and Jared E. Harrison, as commissioners, looking at that bond and reading the section of the act which I handed to you, I will again ask, was the approval of that bond preceded by the presentation of the petition?

A. (Witness looking at paper.) The appointment is in my handwriting. I have no distinct recollection at this time with regard to the presentation of any paper. I have this recollection in relation to the case, that an application was made to me for the appointment of commissioners in this

township, and also commissioners for the township of Woodside, and in connection with one or the other of those applications—I cannot distinguish which, my impression is the Bellville application—a correspondence
184 occurred between Mr. Keasbey and myself with regard to the policy, if not legality, of the act.

but I have no distinct recollection with regard to the papers. I remember the appointment in this case, because it was the occasion of my acquaintance with Robert M. Hening, whom after this occurrence I knew quite well and quite pleasantly.

Q. Then you are clear that in some way you appointed Mr. Robert M. Hening, Jared E. Harrison, and Hiram B. Little?

A. I have no recollection of the names of the other commissioners but Mr. Hening. I have a distinct recollection of making the appointment of that gentleman.

Q. Judge, would you have approved of that bond unless you had received all the preceding papers and filled all the prerequisites required by the act?

(Objected to by defendants' counsel.)

Mr. RANSOM. I want to know whether in exercising this power in making this appointment, you had seen that all the requirements requisite to the act had been complied with. I simply want to know whether
185 in making that appointment you would have done so unless the prerequisites had been complied with?

Objection renewed by defendant's counsel.

Whereupon the court overruled the defendants' said objection and admitted the question, to which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

A. I have no recollection, as I said before, at this time, of the examination of those papers. All I can speak of is my uniform habit with regard to applications of this character. If I am to speak of that, my habit is uniform to make such examination of applications of this kind as at the time and for the time being satisfied me that the law has been complied with.

186 Q. Then you are clear that you would not have approved of this bond unless, in your opinion, it complied with the statute?

A. That is all I can say.

Q. Do you remember the fact of the application that Mr. Keasbey made—that Mr. Keasbey made an application to you?

A. I remember the fact, but I am quite clear that the application related to the township of Woodside, and I remember that fact; and I remember that fact from the circumstance of a correspondence between Mr. Keasbey and myself, in the course of which I made some little objection to the appointment of one of the gentlemen named as a commissioner. Not from any prejudice, but from something that had transpired in a case that had been tried before me a short time before, but with regard to this I have no other recollection than what I have stated.

Q. I am asking you in regard to the Woodside case. By agreement among the counsel, in order to save you being called again, the evidence in that cause shall be evidence in this. You do then distinctly recollect the

application for an appointment of commissioners for Woodside?

187 A. I have a very distinct recollection in that, for the reason that it was the winter I was sick, and I was at Belvidere when the first communication was made to me by Mr. Keasbey in relation to that appointment. He named among the commissioners, or mentioned among the commissioners, I think, a Mr. Briggs. A case had been tried in Essex circuit court, a short time before, in the course of which something had been disclosed in regard to the business or firm of which Mr. Briggs was a member, and while there was no reason why I should not name him, I remember writing Mr. Keasbey and stating that fact, and suggesting the probability that some one else would be more satisfactory. I have that recollection in regard to that particular case.

Q. Robert M. Hening was not a commissioner in that case?

A. Robert M. Hening was not a commissioner in that case.

Q. You don't remember that Mr. Keasbey presented the application in which Mr. Robert M. Hening was a commissioner?

A. I don't recall Mr. Keasbey's connection with that application.

188 I do recall his connection with the other application distinctly.

Q. When you appointed Mr. Hening, did you appoint other ct. commissioners with him?

By Mr. McCarter. The witness has said that he could not recollect. It is hardly fair to give his reasoning on the subject.

Witness. I can only answer with regard to what my habit and custom with respect to appointments at this time was.

Q. Now, judge, what did you do with the papers then?

A. I have no recollection definitely on that subject. I can only speak on that subject from what my habit uniformly is, and with regard to papers of the class to which these papers belong.

Q. Handing them back to the counsel who presented them?

A. My habit is to return them to the counsel.

Q. Have you been able to find this petition and order among your papers?

189 A. I have never seen it to my recollection.

Q. You were subpœnaed to produce it, were you not?

A. I have made search.

Q. Among all your papers?

A. Of course not among all my papers, because that would be almost impossible. I have looked everywhere it would be likely to be.

Q. And you have been unable to find it?

A. I have been unable to find it.

Q. You have been unable to find the petition or any of the papers?

A. Any of the papers.

Q. The same with regard to the town of Woodside?

A. Certainly.

Q. Is that writing, the allocatur, in your handwriting on that bond?

A. This allocatur is in my handwriting, and I have a recollection in regard to this bond, making inquiry as to the circumstances of Dale E. Culver.

Cross-examined by Mr. McCarter:

190 Q. Had you ever made the appointment of commissioners to issue bonds in aid of railroads for any other railroad than the Montclair Railway?

A. I think not.

Q. Then the first application made for that railroad was the beginning of your practice?

A. Yes.

Q. How can you tell which application was made first?

A. I cannot.

Q. Did you examine the bond itself before you gave your approval to it?

A. I have no recollection, Mr. McCarter, of having done so. I can only speak of my habit, and of my belief that I satisfied myself at the time with regard to the bond.

Q. Can you give any idea of the date of the appointment of Robert M. Hening with reference to the date of your approval of the bond?

A. I have no recollection on the subject at all.

Q. I observe, judge, that this bond is dated in October, 1869, and your approval is dated January 25th, 1870. How do you account for that lapse between the dates?

191 A. I have no recollection. I have no facts within my recollection.

Q. Can you tell by looking at the bond, judge, the date of it, and the other particulars—and the particulars of your allocatur, whether the approval of the bond and the appointment of the commissioners were contemporaneous?

A. From looking at the bond, the date of the bond——

Q. (Counsel interrupting.) The date of the allocatur?

A. I cannot answer your question, Mr. McCarter, for really I have no recollection on this subject, except that I have mentioned the fact of making an appointment and appointing Robert M. Hening. The allocatur on the bond *in* only in my recollection by seeing my handwriting.

Q. Do you remember the presentation of any petition to you for the appointment of commissioners of Woodside?

A. I have now no recollection of that fact.

Q. (Mr. YOUNG.) Do I understand you to say that you remember the appointment of the commissioners but not the presentation of the petition?

192 A. I have stated all that I recollect about the matter. The correspondence between Mr. Keasbey and myself with regard to the main commissioner, and the fact that he was appointed, and also with regard to this bond, and making inquiry with respect to the ability of the sureties.

Q. You stated that you made some search for these papers, for what papers?

A. I searched among my own private papers, and in the place where the only official papers that I have preserved are kept, and those are papers that relate to the Driggs Drainage Company. I searched in the drawers in which papers of that kind are kept.

Q. You didn't search generally among your papers?

A. I searched no further than that.

Q. You had some connection with the Driggs Drainage Company. What number of papers did you preserve in regard to that?

A. My recollection is only the correspondence between the commissioners and myself with regard to the estimates on which they reached

193 the price to be paid. Then I was required not only to make the appointment, but I was required to approve the contract and the question as to the form of the contract, and as to the amount proposed to be awarded by the commissioners were both made the subject of a decision before me in court, and I got from Judge Robinson the papers that were submitted at the time showing the manner in which it was proposed to carry out the work, and how the price was agreed upon. I preserved the papers for the reason that they were directed to me and come into my hands.

Q. That was one package of papers—one bundle?

A. Yes.

Q. Now, had you not a large collection of other papers which you have preserved—which have accumulated in the discharge of your duties as a judge?

A. None, I believe, Mr. McCarter, except those that are more interesting than valuable. None that what might be destroyed any day without injuring the rights of any one.

Q. You have such papers, have you not?

A. Yes; briefs, &c.

Q. Did you examine among those papers?

A. I did not.

194 Q. Were you requested to make any search or examination?

A. I think I was.

Q. By whom?

A. I think by Mr. Gummere.

Q. When?

A. Well, I have no recollection now, I think in the *cause* of last summer, or it was some one who served these subpœnas on me when I was subpœnaed here before. I think it was Mr. Gummere himself.

Q. What papers did you search for, judge?

A. I searched to see if I could find anything in relation to this application, and for the purpose of testifying that I had made such search as I have made.

ANTHONY Q. KEASBEY recalled.

Continuation of the direct examination by Mr. RANSOM:

Q. There is one question in regard to the bond that I desire to ask you. Now explain, if you please, how it was that the bond being dated in October was not approved by the judge until January of the following year?

A. The appointment of the commissioners on the petition was
195 the first thing, & they were forbidden to exercise the powers until the appointment was made.

Mr. MCCARTER. If you will state what the facts are it will be sufficient, not what the law is.

WITNESS. The time intermediate was occupied in procuring consents of the persons requiring to sign, as far as I can remember. I know that I had much communication with Mr. Hening especially in the mean time in regard to the consents, and whether they were sufficient.

Q. By "consent," you mean the consents of the tax-payers of the town?

A. I remember frequent interviews with Mr. Hening, especially as to the consents, the roll of assessments for the year, and much business of that kind in relation to the transaction, and I see by the bond that it was drawn in my office, and by a clerk who was directly under my charge, and I observe that after it was signed, I made a pencil memorandum of the residence of Mr. Doremus, one of the sureties, of Jersey City, so that I am satisfied I presented this bond about the time that it was approved, and that it was drawn about the time stated in the beginning of the paper.

196 Q. And you have explained what was done between the times?

A. So far as I remember.

Q. And you heard Judge Depue testify in regard to the application made to him in this case?

A. I did.

Q. From his testimony and your own recollection on that subject is your recollection refreshed as to the fact whether you presented to him the petition and order for the appointment of the commissioners for Montclair?

A. I still feel satisfied that I think the business was entrusted to our office. I do remember presenting the petition to Judge Depue. It was, I think, the first of these cases, and it was done with very great care both in preparing and in submitting them.

Q. You have already testified, I believe, that according to your recollection Judge Depue handed over these papers to you?

A. That is my recollection.

Q. Now I ask you, Mr. Keasbey, to state the contents of the petition presented by you to Judge Depue and the 'rder made by him thereon.

197 (Objected to by Mr. McCarter. Objection overruled.)

A. I remember that the paper was either brought to me or a corresponding paper brought to me by Mr. Spalding and submitted for examination as to its correctness. I think I did not prepare the paper itself. I cannot state its contents from recollection of this specific paper but can only say that I am satisfied that it——

Mr. McCARTER. I object.

Q. You read the paper, My Keasbey?

A. I read it and examined it professionally.

Q. What was the paper for, the petition?

A. It was the petition under the law of 1868, for the appointment of commissioners for bonding the township in aid of the Montclair Railway Company.

Q. Was it signed?

A. By the twelve freeholders; by the twelve persons who were represented to me to be such.

Q. Was anything said in the paper about their being freeholders?

Mr. McCARTER. This is not fair to lead the witness in this way. Mr. Keasbey says he is not certain whether he ever saw the paper at all;

198 he said a paper was brought to him by Mr. Spalding, and he only thinks that this is the paper.

WITNESS. I meant that Mr. Spalding either brought to us the identical petition for Montclair for examination and submission to the judge, or he brought me a petition in a similar case to be used as a form for preparing

the petition to be used in the Montclair case, it being then a rather novel proceeding but having been practised in other places.

Mr. McCARTER. Now my objection is we do not know whether we get the contents of this paper, or whether we get the contents of another paper brought by another person.

Mr. RANSOM. I ask him now the direct question whether anything was said in the paper upon the subject of the signers being freeholders, and I suppose he had the right to answer from his recollection because he swears that he presented the paper and examined it as counsel.

The COURT. Change the form of your question and ask him whether he remembers the contents.

Q. Mr. Keasbey, do you remember any of the contents of this paper?

199 A. Yes, sir.

Q. Other than you have already stated?

A. I remember being employed to present a petition to Judge Depue under the act of 1868; I remember that I did. I know that it contained those provisions which are requisite by the act of 1868. That it was presented to Judge Depue and that he acted upon it and made the order desired either at the time or at a subsequent time; upon consideration, I think the latter is the fact, because I think there was some question as to the provisions.

Q. Please state the contents of the order that was granted by Judge Depue on that petition.

A. I can only state that it was the order provided by the statute for the appointment of commissioners; its form and words I cannot give.

Q. Were any persons named in the order as commissioners for the township of Montclair?

A. There were.

Q. What were their names?

A. Robert M. Hening, Jared E. Harrison, and Hiram B. Little.

200 Cross-examination by Mr. McCARTER:

Q. Do you know in whose handwriting that paper was which you presented to Judge Depue in respect to Montclair Township?

A. I cannot tell.

Q. Do you know whether it was in your handwriting or not?

A. I cannot tell.

Q. Do you know whether it was prepared in your office or not—that paper that you presented to Judge Depue in respect to Montclair Township?

A. May I ask you if you mean written in my office?

Q. Yes.

A. I cannot be sure that it was written in my office.

Q. Do you know whose names were signed to it?

A. I cannot tell.

Q. Have you any knowledge as to whether the persons whose names were signed to it were freeholders?

A. Not remembering now their names I cannot state that I had knowledge of the fact that they were freeholders.

Q. Do you give the names of the persons who were appointed

201 from your memory of what was in the order?

A. I give them from my recollection of the fact that those three

gentlemen were appointed upon that petition by Judge Depue at that time. I have a distinct recollection of the fact of their appointment.

Q. Would you have recollected the fact if you had not seen the bond which has been shown you?

A. If I had been asked who they were I think I would have been—I would have found it difficult to name the three commissioners. I could have certainly remembered Mr. Hening; the other two names are recalled by the bond which I prepared.

Q. You say you are satisfied you presented the paper to the judge. Did you present the bond at the same time that you did the petition?

A. No, sir; I think not long after.

Q. How long after?

A. I should think some months perhaps. I cannot tell more nearly than that. I know that they were appointed and named a long time before they began to act in the issuing of the bonds.

Q. They were appointed before they began to act in obtaining the consents?

A. I cannot tell that; that is my impression that the appoint-
202 ment was made, and that they then began to obtain the consents; but work of that kind may have been done before without my knowledge.

Q. How many applications did you present to Judge Depue for the bonding of townships for the Montclair Railroad?

A. I am not able to state. I think Montclair and Woodside.

Q. Did you present any to any other judge?

A. I cannot recall. I cannot say whether I did or not. I have no recollection of it at present.

Q. Which was presented first, the Montclair or the Woodside petition?

A. I cannot be certain, but I think the Montclair petition was presented first.

Q. Well, & have you anything by which you fix that memory, or is it a mere impression?

A. Only the impression one gets of distant facts and their relations to each other. My impression is that the matter concerning Mr. Hening preceded the matter concerning Mr. Briggs, and that I remember very well what Judge Depue speaks of, but I am not sure——

Q. (Counsel interrupting.) You remember the correspondence you had with Judge Depue about the order in the Woodside case?

A. I did not remember it until he stated it.

Q. Does that bring it back to your memory?

A. It was the question made by him in regard to that particular appointment, but not the written correspondence.

Q. Did it not bring back to your memory the doubt which he suggested in regard to his duty to appoint at all under the law, as to the legality of the law?

A. Yes; I think it does.

203 Q. Now, Mr. Keasbey, was it probable that the correspondence had reference to the first application presented to Judge Depue?

A. My impression is that the Montclair petition was made first; it is not a distinct recollection at all. As to the probability, I think the doubt as to the law grew up with the continued practice of it.

Q. You say you think the judge sent you back the papers?
A. I think so.
Q. What did you do with them?
A. I cannot tell positively.
Q. Well, have you any recollection?
A. I can state what I think. I think I gave them to Mr. Spaulding.
By the COURT. That has reference both to the petition and the order, or only to the petition?
A. I think there was no provision for filing the papers anywhere; they were made by the judge and given to me; they were given by me, I think, to Mr. Spaulding.
Q. Now, who was the active man in bringing about the bonding of these towns for that road—acting for the railway company, I mean?
A. Mr. Spaulding was one of the very active members.
Q. Wasn't he the most active of any?
A. I think he was.
Q. And your recollection is that after these papers were returned to you you handed them to him?
A. I say that is what I think I did. It might have been to Mr. Hening. I saw him frequently, but I think Mr. Spaulding was the
204 active man in managing the details of the transaction.
Q. And was he connected in any way with the railroad company?
A. He was.
Q. Do you know how?
A. Do you mean in what official capacity?
Q. Yes; if any.
A. I cannot state it now what office he held, if any.
Q. Was the railroad then built or in course of construction?
A. In course of construction; not built, certainly.

WILLIAM A. SMITH, a witness produced on the behalf of the plaintiff, being duly sworn according to law, on his oath says:

Direct examination by Mr. GUMMERE:

Q. Are you clerk of the county of Essex?
A. Yes, sir.
Q. (Handing witness a book.) Is that the register of the bonds of the township of Montclair?
A. It is.
Q. Where do you produce it from?
A. My office.
Q. From your records?
205 A. From the records.
(Plaintiff's counsel offers in evidence certified copies of the consent of the owners of real estate in the township of Montclair, and the issuing of bonds and exchanging them with the Montclair Railroad Co. for their income bonds, with the affidavit of the commissioners of Montclair Township that the signatures of the tax-payer swere made in their respective presences, and affidavits of the assessor of Montclair Township that the persons who signed the consent represented at least two-thirds of the

taxable real estate of the township of Montclair, and the same was marked Exhibit No. 6, on behalf of the plaintiff.)

Cross-examined by Mr. McCARTER:

Q. You were elected and commenced your duties as county clerk of the county of Essex when?

A. On the 1st day of November, 1877.

Q. You knew nothing about this volume which you call the register, except that you found it on file in your office?

206 A. That's all.

Q. You have no personal knowledge?

A. No, sir.

(Plaintiff's counsel offered in evidence the volume of the register of the bonds in question in the clerk's office in the county of Essex, and the same was marked Exhibit No. 7, on behalf of the plaintiff.)

HENRY J. DUSENBERRY, a witness produced on the part of the aforesaid plaintiff, being duly sworn according to law, on his oath saith:

Direct examination by Mr. GUMMERE:

Q. Were you clerk of the county of Essex on the 19th of March, 1870?

A. Yes, sir.

Q. How long before that time, and how long after?

A. I was elected in the fall of 1867.

Q. And served 5 years?

A. Yes, sir.

Q. Here are a number of bonds. I wish you would look at

207 each of these bonds, and see whether that is your certificate signed by you on each of them.

By Mr. McCARTER. Have you examined them, Mr. Gummere?

By Mr. GUMMERE. Yes.

By Mr. McCARTER. It is hardly worth while to examine them all again.

Q. Is that your signature on that bond; in your hand?

A. Yes, sir.

By Mr. GUMMERE. It is admitted by counsel that each bond is certified to by the clerk.

By Mr. McCARTER. Subject to examination and inspection.

(Plaintiff's counsel stated that he preferred that the witness examined and inspected them now.)

208 Q. Go on and examine them, and see if they are all certified to by you?

A. (Witness examines the bonds.)

Q. (The 64 bonds in suit in this cause being shown to witness.) Did you, as clerk of the county of Essex, certify on each of those bonds that it was registered in the county clerk's office, signing your name Henry T. Dusenberry, clerk of Essex County?

A. Yes, sir

(Plaintiff's counsel offered in evidence the certificate of registry, by Henry T. Dusenberry, clerk of the county of Essex, to each of the bonds in suit, and the same was marked Exhibit No. 9, on behalf the plaintiff.)

Cross-examined by Mr. McCarter:

Q. How were these bonds registered?

(Plaintiff's counsel objected. Question admitted.)

A. Copies of the bonds were brought to the office.

209 Q. On what form were copies of the bonds brought to the office?

A. It is in that book.

Q. Is this volume which was produced just now by the present clerk, Mr. Smith, the volume containing copies of the bonds that were brought to the office?

A. Yes, sir.

Q. What did you actually do in the matter of the registry of these bonds?

A. I think the bonds were leafed over, and each number certified to by me as the bonds were leafed over in the book.

Q. After the registry, what remained in your office to indicate that the bonds had been registered?

A. This book.

Q. What entries were made in that book?

A. None at all, I think, except I see I have marked filed here.

Q. Marked filed March 19th, 1870, with your signature; that was made when?

A. At that time; that is my signature.

Q. The first bond in this bound volume has your signature under the words "Registered in the county clerk's office" in red ink?

A. Yes, sir.

Q. Do you know when that was put there?

A. At that time.

210 Q. Do any of the other bonds contain that signature?

A. I don't see any signature except to the first bond.

Q. Then, besides the mark "filed" in that volume, and the signature on the first bond contained in it, what else was there in your office at the time to indicate the registry of the bonds except the volume itself?

A. Nothing else.

Q. Can you recollect now, Mr. Dusenberry, the date that these bonds were registered, except that your memory is refreshed by the production of the certificate of filing?

A. That is all I have to remember by.

Q. State how the registry was brought about, and who participated in it.

A. I think I was called upon at the house, by either Mr. Parker or Mr. Keasbey.

Q. At what house?

A, My own house.

Q. At what time in the day?

A. Well, I have had no opportunity of refreshing my memory; I think it was about half-past seven in the morning.

Q. Before or after you had had your breakfast?

A. I cannot remember that.

Q. What were you doing when you were called upon?

211 A. My recollection is I was dressing myself.

Q. Well, state what your recollection is of what you did.

A. Whoever it was came to the house said that they had some business for me in the office, and desired my presence there; I immediately repaired to the office, and when I got there I found these parties.

What parties?

A. I think Mr. Parker and Mr. Keasby, and one or two other gentlemen I can't swear postitively who they were.

Q. What did you do?

A. Mr. Parker—I had no knowledge of this transaction at all—I placed reliance on what Mr. Parker said, and he at once told me it was necessary I should certify those bonds, under the act; and what I did I did under his directions at the time; I think we went into the vault and I signed each one of the bonds.

Q. Each one of the original bonds you mean?

A. Yes, sir.

Q. How long were you engaged in the process of signing each one of the bonds?

A. I could not say as to that.

Q. As near as you can tell?

A. I think it must have been nearly an hour, probably longer.

Q. Who else were there besides Mr. Parker and Mr. Keasby?

212 A. There were other gentlemen; I don't know whether I knew any of them or not, now; I can't say; I could not be positive as to that.

Q. How many rooms did your office consist of at that time; what were they, and to what purpose were they devoted?

A. The front room was devoted to the recording room; the middle room a business office, and the back room the vault.

Q. In which the records and the copies were kept?

A. Yes, sir.

Q. Who else was in the vault with you while the registry was going on, except the parties who were in the business?

A. I think Mr. John L. Blake came into the vault.

Q. This Mr. Blake here?

A. Yes, sir.

Q. Did he take any part in the business that was going on?

A. No, sir.

Q. Did he ascertain what was going on?

A. I don't remember now of Mr. Blake saying anything at all; he came in and stepped out again.

Q. Was the registry in the usual course of business, and in the regular business hour, or otherwise?

A. I think it was before the customary business hours in the office; my habit was to get to the office about eight o'clock.

213 Q. When did you first see the bonds, and who produced them?

A. I first saw them at the office; they were produced there by Mr. Parker or Mr. Keasbey, who appeared to have the matter in charge.

Q. Were both of them there?

A. I think they were.

Q. Was anything said in the matter in regard to the thing being done in haste?

A. I have no recollection of anything of that kind being said.

Q. Was anything said which gave you the impression or understanding that haste was required?

A. Well, the unusual hour in the morning, and my being called down, I think I got the impression that there was some haste, that they were in a hurry to have the thing done; that's all.

Q. That's all.

HIRAM B. LITTELL, a witness produced on the part of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. GUMMERE.

Q. Where do you live?

A. Montclair.

Q. Did you act as one of the commissioners of the township of
214 Montclair under the act of April 9th, 1868?

A. I did.

Q. You were subpœnaed to produce the petition presented to the judge of the Essex County circuit court, under the provisions of the act for the appointment of commissioners for the township of Montclair, and also the order of the judge appointing commissioners of that township?

A. I was.

Q. Did you ever see them?

A. I don't think I ever saw the petition.

Q. Did you ever see the order?

A. I think I did.

Q. Where and when?

A. In the hands of Mr. Hening about that time; the exact date I could not give you.

Q. Is Mr. Hening living?

A. He is not.

Q. Who did that order appoint as commissioners?

(Defendants' counsel objected to the question on the ground that the order will show for itself.)

By the PLAINTIFF'S COUNSEL. I ask if, in your honor's opinion, I have not shown sufficient diligence in accounting for the loss of this
215 paper to admit of secondary evidence of its contents.

By DEFENDANTS' COUNSEL. It seems to me the plaintiff has not shown proper diligence; I have presented these points to the court before, and I do not care to take the time to go over them again.

(Question withdrawn.)

Q. Who acted with you as commissioners of the township of Montclair?

A. Hening and Harrison.

Q. How long did your acting continue?

(Defendants' counsel objected.)

Q. I understand, then, that you three gentlemen acted as commissioners from about the first of February, 1870, how long?

A. I have here a memorandum in my pocket about it; I can give you dates exactly if you will permit; I cannot tell you from memory; January 20th was our first meeting.

216 By the COURT:

Q. What year?

A. 1870.

Further direct:

Q. How long did you act?

A. Until June 8th, 1874—was our last meeting.

Q. During all that time were you three men discharging openly the duties of commissioners of the township of Montclair?

A. I think Mr. Harrison resigned a year before that—perhaps more, and Mr. Hening died.

Q. When?

A. Well, after that date; I cannot give you exactly the date, but if you wish it I can give you Mr. Harrison's resignation.

Q. Yes; what is the date of it?

A. August 15th, 1873.

By the COURT:

Q. Did not Mr. Hening act after that?

A. Yes, sir; we held our last meeting in June, 1874, at which Mr. Hening and myself were present. Mr. Hening died after that. I have not the exact date of his death.

Further direct:

Q. Did you give bonds as town commissioners?

A. We did.

Q. Did you procure the consents required by law of the real estate owners?

A. Well, personally, I only procured the consents of two or
217 three persons. Mr. Hening procured most of the consents.

Q. Did you issue the bonds required by the statute?

A. We did.

Q. Was it known through the township that you were acting as commissioners?

A. I think it was.

Q. When was it you saw that order? You say you saw it in Mr. Hening's hands.

A. It was before we met to organize.

Q. He showed you the order of appointment?

A. I think it was on the cars between Newark & Montclair.

Q. Did that order purport to appoint Robert D. Hening, Jared B. Harrison, and Hiram B. Little commissioners of the township of Montclair?

(Question objected to.)

By PLAINTIFF'S COUNSEL. Now, we have shown these men were the de facto officers of the township of Montclair, and I say they were bound to produce that paper.

By Mr. MCCARTER. Let me examine him a little on that point.

By Mr. MCCARTER:

Q. Mr. Little, you have given the statement you have made here of dates and other things from a book you produced. What is that book?

A. The minute book of our proceedings.

Q. Did you keep minutes of your proceedings?
218 A. Yes, sir.
Q. Who wrote it?
A. I did.
Q. In your handwriting?
A. Yes, sir.
Q. And these memoranda from which you testified were made by yourself?
A. Yes, sir.
Q. How long before your first meeting that you saw that order—that paper?
A. Only a few days.
Q. When was the date of your first meeting?
A. The twenty-eighth of January.
Q. Had you then perfected your bonds?
A. I cannot swear that.
Q. Had you executed the bond at all then?
A. Yes, sir, before that date; when I cannot answer.
Q. When did you cease to be commissioner?
A. When the last law took it out of our hands, and put it in the town committee.
Q. When was that?
A. I could not give you the date.
Q. Well, the act has been produced here; it was in 1874; what became of the papers the commissioners had?
219 A. They have been in my possession.
Q. Those you had have been in your possession?
A. Yes, sir.
Q. What did those consist of?
A. These minute books and the bonds of the Montclair Railroad, and one or two receipts, and the memorandum which was made between the railroad and the commissioners.
Q. Then the papers which were in the hands of the commissioners remained in their hands?
A. Yes, sir.
Q. And never were turned over to the township authorities?
A. They would not receive them.
Q. Were they offered to the township authorities?
A. Yes, sir.
Q. And they refused to receive them?
A. Yes, sir.
Q. How soon after the law was passed which put these duties upon the town committee?
A. I cannot answer; they were one thing we wanted to get rid of as quickly as possible.
220 Q. That is all the questions I have to ask.

(Plaintiff's counsel renewed offer to prove the contents of the order by this witness. Defendants' counsel objected.)

By the COURT. It has been proved by this witness that these gentlemen were de facto acting as agents of this township for 4 years, and also proved they were acting under an order which was in the possession of one of

these gentlemen, and the question is whether it is competent to prove the contents of that order by this witness. I think it is.

And thereupon the court overruled the objection of the defendants' counsel to the admission of the testimony, and admitted the evidence, to which ruling and decision of the court the defendants' counsel prayed an
221 exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Further direct by Mr. GUMMERE:

Q. When did that order assume to appoint commissioners of the township of Montclair, and by whom was it made?

A. I do not think I can remember the contents, further than the appointment of these three gentlemen.

Q. Which three gentlemen?

A. Mr. Hening, Mr. Harrison, and myself.

Q. Mr. Littell, look at these bonds; do they purport to be executed by R. M. Hening, J. B. Harrison, and H. B. Littell, and are these the three gentlemen you speak of as acting commissioners?

A. We were.

Q. Did you see these bonds executed?

A. Do you mean by that seeing them sign their names to that paper; I would not like to swear I did see that.

Q. Tell us what you did see.

222 A. We were sitting at a table in a row, and Mr. Hening signed first, and then past to Mr. Harrison and then passed to me.

Q. Were these two names, R. M. Hening, J. B. Harrison, there before you put your signature there?

A. They were.

Q. They were all done at the same time?

A. Yes, sir.

Q. Were there any other three men in the township of Montclair during the time Hening, Harrison, and Littell were acting as commissioners who claimed to be commissioners of the township of Montclair?

A. I never heard of any.

Q. Do you say the same as to all these bonds that were produced as to execution, they were signed first by Hening, then passed to Harrison, then passed to you?

A. Yes, sir.

Q. The same as to all the bonds?

A. Yes, sir.

Q. You have already said Mr. Hening is dead?

A. Yes, sir; when I said yes, I refer to the $200,000 of bonds that were signed.

223 (It is admitted that the signatures on the bonds are the genuine signatures of the commissioners named by the witness.)

By Mr. MCCARTER:

Q. Did you read that order?

A. I do not remember reading it.

Q. Did you see it open?

A. Yes, sir.

Q. How do you know its contents if you do not remember reading it?
A. I know its contents only by what Mr. Hening told me; that is, I can only remember that I may have read, or I may not, I won't say I did not.
Q. You only know its contents by what Mr. Hening told you?
A. Yes, sir.
Q. Do you know anything about the signature to it?
A. No, sir.
Q. You did not see the signature?
A. I do not remember seeing it.
Q. Whose signature was to it, or, that you knew it as a genuine signature or not?
224 A. No, sir; if I had seen the signature I would not have known whether it was genuine.
Q. These bonds that you signed, where were they signed; at what place; in New York?
A. At the office of the Montclair Railroad Company.
Q. And when?
(Plaintiff's counsel objected. Admitted.)
Q. They were signed in New York?
A. Yes, sir.
Q. In whose office?
A. In the office of the Montclair Railroad Co.
Q. Can you tell where that was?
A. I cannot.
Q. When were they signed?
A. On the 18th March.
Q. At what time of the day?
A. In the forenoon.
Q. When did you go to New York for the purpose of signing them?
A. That morning; the morning of that day.
Q. From where did you go?
225 A. I went from Newark.
Q. How did you come to have the meeting there that day?
A. We went there to sign them?
Q. At whose request?
A. Well, it was our own decision.
Q. Whose appointment?
A. The commissioners went there for that purpose.
Q. Were they signed on the 18th or 19th?
A. I think they were signed on the 18th; that is my recollection of it.
Q. Do you remember how that stamp of the 17th got on that?
A. I do not.
Q. Was it on when they were signed?
A. I do not remember.
Q. I see the bonds have originally been the first day of January; printed so; & the 17th of March printed over. Do you know whether that was done when they were signed?
A. That had been done when they were signed.
Q. Was it done at the same time?
A. Yes, sir; well, I do not remember whether that erasure &
226 alteration of the date, but if done, the commissioners knew that al-

teration was done, but whether it was done right there or done before, I cannot say.

Q. Had it been done when they were signed?

A. Yes, sir.

Q. Was it not done the day they were signed?

A. I think so.

Q. Were they not signed on the 17th?

A. No, sir; I think on the 18th.

Q. What makes you think so?

A. We went to New York.

Q. You might have gone on the 17th or 18th?

A. I was there both days.

Q. What were you doing there on the 17th?

A. We were there to arrange for the issuing of the bonds.

Q. You were there on the 17th. Why not sign them then?

A. We were getting things in readiness to sign.

Q. Getting what things in readiness to sign?

A. I stated on the stand before that there was a fear on the
227 part of some of our town people—— (Interrupted.)

Q. Now, I don't want any long preamble. What were you getting ready to sign?

A. Well, it was the agreement between the railroad co. and the commissioners.

Q. Those things were being got ready?

A. Yes, sir.

Q. And you went to New York to sign the papers?

A. Yes, sir.

Q. Why did you go to New York to sign them?

A. It was more convenient to do it there than anywhere else, or we thought so.

Q. Why?

A. Well, I don't know; we went over to sell these bonds; to issue these bonds and sell them; or the same thing, to get other bonds for the bonds, which we would have to go to New York to do.

Q. Why?

A. Because we could not have got them at Montclair so easily.

Q. Where were the railroad bond' you got for them?

A. At the railroad office.

Q. They could have easily been brought to New Jersey, could they not?

228 A. Yes, sir.

Q. What was the necessity of going to New York?

A. Well, it could have been done in New Jersey.

Q. Why did you go to New York?

A. I cannot tell anything else, only we went there to issue them.

Q. Was it not because the commissioners knew that an injunction was being applied for to prevent the issuing of those bonds?

A. I do not think we went to New York for that reason.

Q. Was not that the reason?

A. I think not.

Q. Was not that the fact that the commissioners did know it?

A. We knew there was a report there was to be an injunction.
Q. Can you specify that as any reason why you went to New York to issue those bonds?
A. Personally, I can say it was not the reason.
Q. As far as you are concerned personally?
A. Yes, sir.
Q. Did the commissioners go home that night or stay in New York?
229 A. I cannot say, only for myself.
Q. How about yourself?
A. I staid in Newark.
Q. War there any injunction served on you?
A. Not until I got home on the 18th.
Q. After you got home on the 18th an injunction was served on you?
A. Some kind of a notice; I supposed it to be an injunction.
Q. Have you the paper now?
A. No, sir.
Q. What did you do with it?
A. I do not know.
Q. You signed last, did you?
A. Yes, sir.
Q. The other signatures were all on?
A. Yes, sir.
Q. After you signed the bonds, what did you do with them?
A. They were put in the hands of some individual to have them registered.
Q. Well, what did you do with them?
A. We put them in the hands of some individual to go to Newark and have them registered.
Q. What individual?
A. I cannot remember the person.
230 Q. Was that before or after you sold them?
A. I cannot answer that question.
Q. Did you sell them at all?
A. Well, sir, I received the check of $200,000 for the bonds.
Q. When?
On the 18th.
Q. From whom did you receive the check?
A. I could not name the gentleman.
Q. Did you give him the bonds?
A. Yes, sir.
Q. What did you have to do with it after that?
A. With what?
Q. With the bonds after that?
A. I did not have anything to do with them.
Q. You disposed of them, then, to somebody for $200,000?
A. We had disposed of them when I left there.
Q. And you gave them over to this gentleman and took his check?
A. Yes, sir.
Q. Would you know that gentleman's name if you heard it again?
A. I am doubtful.

Q. Was it Mr. Farley, do you remember.

A. That sounds like it, but I would not specify that was his name.

231 Q. What time did you leave there?

A. I think it was early in the afternoon.

Q. Were the bonds delivered to Mr. Farley?

A. Yes, sir.

Q. And you got a check for them?

A. Yes, sir.

Q. When you say they were given to somebody to be registered, what do you mean by that?

A. I mean it seemed to be necessary that the bonds should be registered, and necessary that some one should take them into the registry office and have them registered.

Q. Was Mr. Farley to do that?

A. I understood it was our duty to make the bonds good.

Q. Did you have anything to do with the registry of the bonds?

A. Only to have them registered.

Q. Did you do anything in regard to having them registered?

A. Only to give them into the hands of some individual.

Q. You say you gave them to Mr. Farley?

A. Well, with the understanding this individual was to take them to Newark.

232 Q. Was this individual Mr. Farley?

A. We delivered them to him and they went into the hands of this individual to complete them.

Q. Who put them in his hands?

A. I cannot say whether it was Harrison, Hening, or I did it.

Q. Did not Farley do it?

A. I could not say.

Q. You say you delivered them to Farley. Did he ever give them back to the commissioners?

A. I cannot say.

Q. Do you know whether after you delivered them to Farley they came back into the commissioner's hands?

A. They did not come back into their hands as commissioners; they may have come back to me.

Q. Did they?

A. Not as I know of.

Q. As far as you know, your control over them was gone when you sold them to Farley?

A. Yes, sir.

Q. Did you ever see Mr. Farley before that time?

A. I did not.

233 Q. Not since?

A. Not since.

Q. You made the arrangements the day before, you say, for the disposition of the bonds?

A. No, sir. We were making these arrangements with the railroad company the day before getting ready for the issue of the bonds.

Q. Who produced or brought forward Mr. Farley?

A. If I remember rightly the president of the railroad co. informed us he had a party who would buy the bonds.

Q. And you never saw Mr. Farley afterwards?
A. No, sir.
Q. And the bonds until they were produced here?
A. No, sir.
By Mr. GUMMERE. You say that you knew these bonds required registry, and that it was understood they were to be registered before you sold them. I understood you to say that was so.
By Mr. MCCARTER. No, he didn't say that; he said they sold them, distinctly, before their registry.
234 Q. You understood they were to be registered, did you not?
A. Yes, sir.
Q. Was that the understanding of the commissioners?
A. I think it was the day the sale was made, at the time, sir.
Q. At that time it was understood they were to be registered?
A. Yes, sir.
Q. And this individual, you do not remember who, was selected to take the bonds to Newark and register them?
A. Yes, sir.
Q. With the assent of the commissioners?
A. Yes, sir.
Q. You assented to his taking them?
A. Yes, sir.
Q. You said you had some receipts, did you not?
A. Yes, sir.
Q. Where are they?
A. (Witness produces the same.)
Q. I hold in my hand the receipt of Charles B. Sanford, clerk of the township of Montclair. Was he clerk of the township at the 21st of March, 1870?
A. I think he was.
235 Q. Receipt purporting to receive from——
(Counsel read the same.)
You produced that from the papers of the commissioners?
A. Yes, sir.
Q. You have also a bill of sale for the sale of your bonds for the purchase of twenty registered income bonds?
A. That is the receipt for the railroad bonds.
Q. Is that all you have?
A. Yes, sir.
(Plaintiff's counsel also offered in evidence the original consents.
The defendants' counsel objected to the same as not being competent or admissible in evidence, because the affidavit of the assessor is not in compliance with the law. The same objection to apply to the certified copy which is now substituted for the original.)
Whereupon the court overruled the defendants' said objection
236 and admitted the same as evidence, to which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.
JNO. T. NIXON, *J.* [L. S.]
And thereupon the consents were read in evidence, and were as follows, viz:
"The undersigned, owners of real estate in the township of Montclair,

in the county of Essex and State of New Jersey, hereby consent that the said township shall issue its bonds to the amount of two hundred thousand dollars under the 'Act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company,' and that the said bonds of the said township shall be exchanged for or their proceeds invested in the income bonds of the said Montclair Railway Company.

"Dated August 20th, 1869.

"JOHN H. HAYDEN, and many others.

"Signed and acknowledged in the presence of the undersigned,
237 one of the commissioners named for this purpose under said act.

"R. M. HENING, *Com.*"

Also seven other consents attached to and similar to the above, except as to dates, which dates are as follows, viz: One dated August 30, 1869; one dated August 24, 1869; one dated September 18, 1869; one dated August 20, 1869; one dated September 18, 1869; one dated September 1, 1869, and one dated February 16, 1870.

On each of which was endorsed an affidavit, of which the following is a copy:

STATE OF NEW JERSEY,
County of Essex, Township of Montclair, ss:

I, Arzy E. Van Gieson, assessor of said township, do hereby devise and say that the owners or representatives of at least two-thirds of the taxable real and landed property of said township have signed the consent to issue bonds under and by authority of "the act to authorize
238 certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company."

ARZY E. VAN GIESON.

Sworn before me this seventeenth day of March, 1870.

CHAS. B. MORRIS,
Justice of Peace.

And all being attached together and annexed thereto was an affidavit of Robert M. Hening, as follows:

STATE OF NEW JERSEY,
Essex County, ss:

Robert M. Hening, one of the commissioners of the township of Montclair, in the county of Essex, duly appointed under the act entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," being duly sworn, saith that the several signatures of the owners of real estate in the township of Montclair appended to the foregoing consent, and written on the lines corresponding with the signatures of this deponent, being
239 (213) two hundred and thirteen names in all, are the genuine signatures of the said several land owners, and that the said consent was signed and acknowledged by the said several owners in the presence of

this deponent after having been made acquainted with the contents thereof by this deponent.

R. M. HENING.

Sworn and subscribed this seventh day of March, A. D. 1870, before me.

CHAS. B. MORRIS,
Justice of Peace.

Also annexed thereto a similar affidavit by Jared E. Harrison, as to the thirty-three names, and Hiram B. Littell, as to fifteen names of alleged landholders in said township.

240 HIRAM B. LITTELL resumed, by Mr. GUMMERE:

Q. You had in your hand while on the stand two (2) receipts—they were not offered in evidence, I believe; the receipt of Charles B. Sandford and the bill of sale for the purchase from the Montclair Railroad Co. of the income bonds?

A. Yes, sir.

(Plaintiff's counsel offered in evidence the receipts produced by this witness subject to cross-examination. The same were marked Exhibits No. 13 and 14, for plaintiff.)

Q. You testified on your cross-examination, Mr. Littell, that you made and kept minutes; who was appointed president of the commissioners; who was your president?

A. Mr. Hening.

Q. You held all meetings as a board, and kept the minutes of your proceedings?

A. We did.

241 Q. Who was your secretary?

A. I was.

Q. At the time that all these bonds were before you, at the time that you issued these bonds, they were all, as I understand you, in the shape they are now, and had their coupons annexed to them, in the same fashion as they are now?

A. Yes, sir.

Q. You have no doubt these bonds were issued?

A. These bonds were issued.

Q. And all issued by the joint authority of the three commissioners?

A. They were.

Q. How come Mr. Hening the only one who signed the coupons?

A. He signed by resolution of the commissioners.

Q. Mr. McCarter inquired of you, Mr. Littell, about the circumstances connected with the issue of the bonds; all that evidence was taken under our objection and subject to exception; but I think you have not stated fully all that took place in regard to these bonds. You stated that

242 you issued on the eighteenth, I think, and you stated the details of the transaction, the taking of the check of Mr. Farley, and then using that check to buy the income bonds of the railroad co.; and you have also stated about the——

(Interrupted.)

By DEFENDANTS' COUNSEL. I do not think he has stated anything about their using the check for that purpose.

By the COURT. I have not heard anything about that in this case.

By Mr. MCCARTER. It is a matter I am not particularly interested in.

Q. You also stated that you met the railroad people on the 19th to make some arrangements; state what arrangements they were.

A. Do you wish me to go into detail about that?

Q. Yes.

243 A. There was a little doubt on the part, in the minds of, some of our people whether we would get the railroad if we issued the bonds and disposed of them before the railroad was built. The arrangements were so made with the railroad folks that they should not have control of the bonds any faster than they done the work.

Q. In the township?

A. Then the bonds were to be handed over to the party that bought them.

Q. As far as they did the work, bonds of an equal value——

By DEFENDANTS' COUNSEL. Let him tell what it was.

By Mr. MCCARTER:

Q. Was that arrangement in writing?

A. Yes, sir.

By DEFENDANTS' COUNSEL. The writing is the best evidence of its contents.

Further direct examination:

244 Q. I do not care about details; you made this arrangement in writing to secure the township for the erection of the road?

A. We did.

Cross-examination by Mr. MCCARTER:

Q. I thought you said you sold the bonds out and out to Mr. Farley?

A. We did.

Q. Was Mr. Farley an officer of the railroad company?

A. I do not know.

Q. Well, then, was that sale bona fide?

A. We considered it was.

Q. Well, was it so?

A. Well, I aint a lawyer; therefore I could not answer the question from that standpoint.

Q. You are a man of common sense; don't you know whether Mr. Farley was the real buyer of those bonds or not?

A. The railroad folks informed us that a man would purchase the bonds; we met him at the railroad office. He gave us his check for the bonds and we delivered him the bonds.

Q. Yes?

245 A. Whether that was bona fide or not——

Q. You say you had made a previous arrangement with the railroad co. that the bonds were not to be issued till a certain amount of work was done?

A. That was done on the 17th.

Q. Did that arrangement stand good at the time of and after the sale to Farley?

A. Yes, sir.
Q. Was he a party to the agreement?
A. I do not know.
Q. Was he present when it was made—the arrangement of the 17th, remember?
A. The first I saw Mr. Farley was when we delivered the bonds. Whether he was in the room while that arrangement was being made I cannot tell you.
Q. Was that arrangement made the day before, or the 17th?
A. This article of agreement between the railroad and the commissioners was made on the 17th.
Q. Was Mr. Farley present then?
A. Not to my recollection.
Q. And the bonds were sold in that article of agreement?
246 A. Subject to the conditions of that article.
Q. And you say that was intended to secure the building of the railroad before the bonds should be issued?
A. Before the bonds should be delivered.
Q. You said yesterday that you actually delivered those bonds to Mr. Farley and took his check for $200,000?
A. Yes, sir.
Q. Did he know of those arrangements you had with the railroad co.?
A. I suppose he did.
Q. Then, it was not a bona fide sale to Mr. Farley, was it?
A. We considered it so.
Q. How do you know he knew it?
A. I do not know as I can tell you.
Q. When did you first see Mr. Farley?
A. When we delivered the bonds.
Q. On the 18th?
A. Yes, sir.
Q. Have you any knowledge whatever that Mr. Farley knew of that arrangement with the railroad?
A. No, sir.
Q. When you say you suppose he did, did you mean by that, do you, that you merely guess so?
247 A. Perhaps that is as near as I can get at it.
Q. Then, you say now that although you delivered the bonds to Mr. Farley, and took his check for them, you had an arrangement with the R. R. co. that the bonds should not be delivered until certain work was done. Delivered to whom?
A. The bonds were to be delivered—the bonds were deposited in one of the trust companies in New York—I think the American; I am not sure now, and they were to be delivered on a certificate from three individuals who had them in charge.
Q. Who were those individuals?
A. I think it was D. Harrison, Samuel Holmes, and Theron S. Doremus.
Q. They were not commissioners, were they?
A. No, sir.
Q. Do I understand you now to swear you considered that a bona fide sale to Farley when you took his check for $200,000, and at the same

time you had an agreement with the railroad co., which you did not know Farley knew about, that the bonds were not to be issued until
248 certain work was done?

A. That question is so long a one I don't know which to answer.

Q. It is just one question. I will repeat it if you do not understand it. Do you mean to swear you considered it a bona fide sale to Farley when you say there was another arrangement with the railroad co. by which the bonds were not to be delivered until the railroad co. had done certain work?

A. Yes, sir.

Q. What did you do with Farley's check?

A. We bought the railroad bonds with it.

Q. And when did you use that for that purpose?

A. On the 18th.

Q. On the same day as you delivered the bonds to Farley?

A. We did.

Q. Was Farley's check certified?

A. I do not remember.

Q. Was it presented for payment?

A. No, sir.

Q. What did you do with it?

A. Paid it to the railroad men.

Q. And got the township bonds?

249 A. No, sir.

Q. The railroad bonds, I mean?

A. Yes, sir.

Q. Now, Mr. Littell, had it not been agreed on the day before that you were to take the railroad bonds for the township bonds?

A. No, sir.

Q. Was it not on the consent that you acted that they were to be exchanged—the bonds for the township bonds?

A. That we were to exchange them with the railroad?

Q. Yes.

A. I did not understand it.

Q. "Issue bonds and take the bonds of the Montclair Railroad; and that the said bonds of the said township shall be exchanged for, or their proceeds invested in, the income bonds of the said Montclair Railroad."

A. I think we acted under the law; whatever that is, we tried to carry out. I do not know as I remember anything about the heading of that list.

Q. Did you not agree with the railroad co. that you would take
250 only the same amount of income bonds of the co. that you disposed of township bonds?

A. That is what we were appointed to do.

Q. And that is what you agreed to do, was it not?

A. That is what we did do.

Q. And when did you make the agreement with the railroad co.?

A. We made it on the 18th, when we made the exchange.

Q. Did you not make it on the 17th?

A. It was consummated on the 18th.

Q. Did you not understand on the 17th that arrangement was that you were to take from the railroad co. income bonds?
A. Yes, sir.
Q. To the same amount as the township bonds?
A. Yes, sir.
Q. This was part of the arrangement, was it not?
A. Well, as I understood it, that was the law compelling us to do it.
Q. I do not ask you what the law was, but what the arrangement was?
251 A. There never was an arrangement.
Q. Was not that the arrangement?
A. There was no arrangement before the day.
Q. Was it not arranged and agreed between you and the railroad co., on the 17th, that you were to take of the railroad co. the income bonds?
A. I do not think there was any arrangement about it.
Q. Did you know that was the arrangement?
A. I knew that was to be done. I did not think there was any arrangement.
Q. Could it be done without an arrangement?
A. It was not necessary to be done the day before.
Q. How did you know it was to be done?
A. Well, that is what we were appointed for to do.
Q. You understood, then, you were appointed to exchange the one set of bonds for the other?
A. I knew we were appointed to dispose of the township bonds and purchase railroad bonds.
Q. Now, why was Mr. Farley brought in?
252 A. Well, Farley was brought in as the purchaser of the Montclair bond.
Q. Was it not to appear to comply with the letter of the law?
A. It might have been that.
Q. Was not that lhe object, Mr. Littell?
A. It was the object of the commissioners to comply with the law.
Q. Now, did you not know, and did you not at the time Farley gave that check, that you were going to use that check to take the railroad's bonds?
A. Yes, sir.
Q. Now, what was the reason of the intervention of Mr. Farley's check?
A. We were required to sell the bonds, and we sold them for that check.
Q. You did it, then, because you understood you were to sell the bonds, and put the money in the other bonds?
A. Yes, sir.
Q. And who produced Mr. Farley?
A. The railroad men.
Q. He gave his check for how much?
A. $200,000.
Q. Upon whom?
A. I don't remember the bank.
Q. Was it on any bank?
253 A. Yes, sir.
Q. An incorporated bank, do you know?
A. I think it was.

Q. And was it certified?
A. I don't remember.
Q. Was it presented?
A. To the bank?
Q. Yes, sir.
A. No, sir; that is, the commissioners did not present it.
Q. Did you know Mr. Farley?
A. No, sir.
Q. Did you know anything about his standing or solvency?
A. No, sir.
Q. And did you give the bonds into Mr. Farley's hands or into anybody's?
A. I think, according to the arrangements, with the railroad—— (Interrupted.)
Q. One moment; I just asked that fact; now, cannot you answer yes or no, whether the bonds were given into the hands of Mr. Farley?
A. I cannot remember that.
Q. Can you say that Mr. Farley ever touched them?
A. I cannot say that.
Q. Can you say that he ever saw them?
254 A. Yes, sir.
Q. Where were they?
A. They were in the railroad office.
Q. And how soon after you got Mr. Farley's check did you exchange that for the railroad bonds?
A. The same day.
Q. How soon after the sale?
A. It might have been an hour, or it might have been half an hour, or it might have been ten minutes.
Q. You cannot remember, can you?
A. No, sir.
Q. It was part of the same transaction, was it not?
A. Yes, sir.
Q. Now, Mr. Littell, you were acting as one of the township commissioners, and, as I presume, acted in good faith; you did not know Mr. Farley at all, did you?
A. No, sir.
Q. You did not know anything about his solvency?
A. No, sir.
Q. Did you make any inquiries about his solvency?
A. No, sir.
255 Q. If you had considered Mr. Farley the real purchaser of those bonds, and his check the real payment that you were to receive for them, would you have sold two hundred thousand dollars of the bonds of the township and taken the check of a stranger without any inquiries as to the solvency of the drawer of the check?
A. Probably not.
Q. What, then, induced you to do it in this case?
A. We understood that the railroad men would take his check for the bonds.
Q. And when did you understand that?

A. I cannot tell you when; whether it was that day or the day before.

Q. Did you not understand it on the day before?

A. I may have understood it a week before: I cannot tell; the railroad folks informed us they had a man to purchase the bonds; whether that was a day before or a week before I cannot remember.

256 Q. Now, you say you had an agreement that the bonds were not to be delivered until the railroad company had done certain work. Was that agreement carried out?

A. Yes, sir.

Q. How long was it before any work was done and a certificate given for the delivery of the bonds?

A. I don't know.

Q. As near as you can tell?

A. No, sir. It might have been a week, or it might have been a month, or it might have been two months; I cannot tell.

Q. Was it not two months?

A. I don't know.

Q. Was it not a month?

A. I don't know.

Q. Was it not a week?

A. I don't know.

Q. Do you know about when the bonds did get out?

A. No, sir.

Q. But who controlled their delivery?

A. I think Mr. Harrison, Mr. Samuel Holmes, and E. D. Doremus.

Q. How, then, could you deliver those bonds to Farley?

257 A. This arrangement was done at the same time.

Q. Well, I say how could you actually deliver those bonds to Mr. Farley, if you say there was an agreement that the bonds were not to be delivered until certain work was done and that work was not done till afterwards?

A. We agreed to deliver the bonds on conditions certain work would be done.

Q. Did you make that condition to Mr. Farley?

A. I think that was the understanding.

Q. Did you not say just now he did not know anything about that arrangement?

A. I did say that.

Q. Do you say now he did not know anything about it?

A. No, sir.

Q. You say these bonds were disposed of on the eighteenth; does not your record say they were disposed of on the seventeenth?

A. I think not.

Q. Will you let me look at it?

A. (Witness produced book.)

Q. Look at the entry of March 24th.

A. Witness examined book.)

Q. Well, sir, what do you say now?

258 A. I say they were sold on the 18th.

Q. But that is not the question. I asked you if your record does not show they were sold on the 17th?

A. No, sir; the record says we went to New York to dispose of the bonds and it took us two days to make the arrangement.

Q. Does the arrangement say so?

A. I think so.

Q. (Quoting.) On the seventeenth instant the commissioners proceeded to New York and there disposed of the bonds of the township of Montclair at par, describing the bonds as follows; and the same day, and so forth. (Counsel read from the book.) Does not that say it was on the seventeenth?

A. It seems to say so, but it was on the eighteenth.

Q. Now, was there not a reason for entering the sale of those on the seventeenth, although they were sold on the eighteenth?

A. No, sir.

Q. Was not it the fact that an injunction was served on you, as
259 one of the commissioners, to prevent the issuing of those bonds on the eighteenth?

A. No, sir.

Q. I understood you to say yesterday that there was.

A. I did not understand the question.

Q. There was an injunction served on the 18th on you?

A. Yes, sir.

Q. Was not that the reason why you entered the record and say the following record was unanimously ordered on the 17th? Was not the reason for entering that record on the 17th, although the transaction took place on the 18th, that it might appear to be done before the injunction was issued?

A. No, sir.

Q. Was your action affected at all by the idea an injunction might be issued?

A. Our action was hastened perhaps.

Q. What do you mean by that, Mr. Littell?

A. What I mean by that is we might not have issued the bonds more than one or two at a time, or two or three as the work progressed; it was hastened by the fact that we issued them all at one time. That is
260 what I mean by hastened.

Q. Is that a true record or not?

A. That is a true record.

Q. Then on the 17th you went to New York and disposed of these bonds, and on the same day received the railroad bonds?

A. No; we went to New York on the 18th, and accomplished the thing on the 17th and 18th; the bonds were not issued until the 18th.

Q. When this record says "On the seventeenth instant the commissioners proceeded to New York and there disposed of the bonds of the township of Montclair, at par, and on the same day the commissioners invested the proceeds of the sale of the township bonds, namely, the two hundred thousand dollars for the registered income bonds of the Montclair Railroad." I ask you if that is a true record or not?

A. That is not a true record in that sense.

Q. Why was not the record truly entered, sir?

A. That is my fault; I intended to make it correct.

261 Q. Had you not heard before the 18th that it was probable an injunction would be issued to arrest the delivery of these bonds?

A. Yes, sir.

Q. From whom had you heard that?

A. Well, I cannot name any individual; it was a kind of a town talk.

Q. Did you not hear it from some person connected with the railroad company, either Spaulding, Dwight, or Pratt?

A. I may have heard it.

Q. Did not your fellow commissioners know it on the 17th and 18th?

A. Yes, sir.

Q. Where did you stay on the night of the 17th—all night?

A. I staid in Newark.

Q. How far was that from your home?

A. Five miles.

Q. Was there not a railroad then existing and running between Newark and your home?

A. There was.

Q. And why did you not go home that night?

A. Well, we did not want to have that injunction served on us.

262 Q. Did the other commissioners go home that night?

A. I don't know.

Q. Was it not arranged you should not go home so as to subject yourselves to the service of an injunction?

A. It was understood we should not go home.

By PLAINTIFF'S COUNSEL. It is understood, I suppose, that all this evidence is taken under my objection.

By the COURT. Certainly.

Q. Was this designed to be a true record of your proceedings?

A. It was.

Q. Does it contain any reference whatever to the condition of the delivery of these bonds depending upon the work to be down afterwards by the railroad company?

A. No, sir.

Q. Does it contain any reference to your having a written agreement designed to effect that result?

263 A. It does not.

Q. Why not?

A. I did not think it was necessary. That is the only reason.

Q. When did you procure the affidavit of the assessor of the requisite amount in value had been obtained?

By the PLAINTIFF'S COUNSEL. The same objection.

By the WITNESS. Shall I answer?

By the COURT. Yes; answer the question.

A. I cannot tell you the date.

Q. Could you tell if you saw your record?

A. No, sir; there may be something in there in relation to it, but when I saw that certificate I don't remember.

Q. Look at that record and see if you can say anything about it?

A. The delivery was on the 16th of March, when we seem to have been satisfied that the certificate was regular.

Q. By the certificate of the assessor?

264 A. Yes, sir; whether that was the first time we saw it, or whether we had seen it before, I cannot tell you.

Q. Who was the assessor?

A. Mr. Van Gieson.

Q. Do you know when he was elected?

A. No, sir; I cannot give you the date; he had just been elected.

Q. Who had been assessor before?

A. Mr. Zenas S. Crane.

Q. Had the commissioners had any conversation with him as to his being willing to make affidavit as to the requisite number of owners?

A. As commissioners they did not; as individuals I don't remember now.

Q. Are you not aware that the previous assessor refused to make any certificate?

A. Yes, sir.

Q. Can you tell how long before the 16th the meeting was held at which Van Gieson was elected?

A. I cannot.

Q. But at your town meeting just previous to that?

A. Yes, sir.

265 Q. Don't you know Zenas S. Crane had refused to make the requisite affidavit because he was not satisfied the requisite number and amount of landholders had signed the consent?

A. I understood that was the reason.

Q. Your record says on the 16th you were satisfied, by the certificate of the assessor, the requisite amount of property owners had signed in favor of the bonds at that time?

A. Yes, sir; that we were satisfied.

Q. Yes; by the certificate of the assessor?

A. Yes, sir.

Q. And on that day it was resolved to issue and dispose of the whole of the bonds?

A. Yes, sir.

Q. Had the arrangement been made with the railroad company before that?

A. No, sir.

Q. And no understanding that the railroad company were to have them?

A. I don't remember of any understanding about it.

Q. Don't you know that very fact, when you resolved to issue the whole of the bonds and invest the proceeds in the Montclair Railroad

266 Company, that you had an arrangement that you were to issue those bonds and get income bonds of the Montclair Railroad Company?

A. We had no arrangement.

Q. Why did you resolve to do it?

A. It was necessary to resolve to do it before we did it.

Q. How did you know you could do it before you did it if you had no arrangement?

A. I suppose we could issue bonds without any arrangement but to issue them.

Q. You could not get the road bonds without any arrangement?
A. We had to sell them first, and had to issue them before we could sell them.
Q. Now, after the 18th—after the bonds were disposed of on the 18th—you went home, did not you?
A. I did.
Q. And what time of day did you go home?
A. I think it was after twelve o'clock some time.
Q. And when on that day was the injunction served on you?
A. In the evening.
267 Q. Where?
A. At my house, I think it was.
Q. Well, did you meet with the commissioners after that; and, if so, when?
A. I did; but I have not the date.
Q. Did you see either of the commissioners the next day?
A. I may have done so.
Q. Were you not with the other commissioners at Messrs. Parker & Keasbey's office on the morning of the next day, or the morning of the 19th?
A. I was not.
Q. You were not there?
A. No, sir.
Q. Were you not at Parker and Keasbey's office that night?
A. Personally I was not, the other commissioners may have been.
Q. You were not there at all on the 19th?
A. No, sir.
Q. Did you see Mr. Hening on the night of the day the injunction was served on you?
A. I think not.
Q. Did you see him on the morning of the next day?
A. I may have done so, but I don't remember.
268 Q. Did you not on the 19th notify him the injunction had been issued?
A. Not to my recollection.
Q. You don't remember it.
A. No, sir.
Q. What time did you go to New York on the morning of the 18th?
A. I don't remember; probably about nine o'clock.
Q. Did you meet the other commissioners there?
A. I did.
Q. Were they there when you got there?
A. I don't remember.
Q. Had the coupons been signed before the bonds were signed?
A. Yes, sir.
Q. When were they signed?
A. I don't know; we appointed Mr. Hening a committee to sign those which he did. When he did it I don't know.
Q. Well, they had been done before you signed them?
A. Before the 17th.
Q. Before the 17th?

A. They had been done before the 17th.
Q. How long before the 17th?
A. I don't know.
269 Q. When did you first see the bonds?
A. On the 17th.
Q. You never saw them before?
A. No, sir.
Q. Who got them printed?
A. I understood the railroad company furnished the bonds.
Q. And all you commissioners did was to sign them, and then make the arrangement of which you have spoken?
A. Yes, sir.
Q. What time did you get through signing them?
A. Some time during the morning of the 18th.
Q. Did the commissioners ever pay for registering the bonds?
A. No, sir.
Q. I see by the record the chairman was directed to employ counsel in the matter of the injunction issued by the chancellor upon the meeting of March 24th. Did the chairman employ counsel?
A. I don't know there was anything done in reference to the injunction, and so there seemed to be no necessity.
270 Q. Now, Mr. Littell, did not the commissioners file an answer for the chancery suit in which the injunction was granted?
A. They may have done so.
Q. You said nothing was done?
A. I meant to say I don't know anything was done.
Q. Did you not in fact sign and swear to an answer in that chancery suit as one of the commissioners?
A. If I did I have forgotten it.
Q. You do not remember.
A. No, sir.
Q. Let me refresh your memory; did you not in that answer swear the commissioners had absolutely, bona fide, and in good faith disposed of those bonds on the 18th, before the injunction was served?
A. I may have done so, but I don't remember.
Q. You do not remember?
A. No, sir.
Q. Do you remember whether the answer which you put in made any reference to the arrangement made by you about any delivery of the bonds until the work was done?
271 A. I have no recollection at all about the answer; if we ever put in one as commissioners, it has entirely gone from my memory.
Q. Do you know whether the commissioners paid any money to counsel for defending that suit?
A. They did not.
Q. Who was the counsel?
A. I do not know.
Q. Now, Mr. Littell, don't you know?
A. I do not. We empowered Mr. Hening, our chairman, to employ counsel; whether he ever engaged any I don't know.
Q. Do you say you do not remember filing an answer, and what counsel prepared it for you?

A. No, sir; I do not.
Q. Nor swearing to it?
A. Nor swearing to it.
Q. How soon did you have a meeting with the commissioners after you separated on the 18th?
A. I do not remember. I could only refresh my memory from my minutes; probably soon.
Q. Well, do your minutes show everything that the commis-
272 sioners did just when they did it?
A. Yes, sir; these minutes are intended to show everything they did, and just when they did it. In relation to that 18th, it does not seem to be in there, but it is an omission; it was not intentional.
Q. Can you remember when you first met after your appointment?
A. No, sir.
Q. What did you have to do with the obtaining of consents?
A. Personally, I had very little to do with it. I think I only got the consent of two or three individuals.
Q. Do you remember whose you got?
A. I do not.
Q. When were the consents obtained?
A. Well, they were obtained during the winter; yes, during the winter.
Q. Were they not obtained during the summer and fall?
A. They may have been.
Q. (Showing witness a paper.) Look at the one dated September 18th, 1869, to which your name appears as first witness.
A. (Witness did so.) Well?
273 Q. Now, in whose handwriting is that?
A. I do not know.
Q. In blue ink, is it not?
A. It seems to be.
Q. The date and all?
A. It seems to be.
Q. The signature is not in blue ink?
A. Yes, sir.
Q. And the signature is Jno. Foney, jr.; did you see that signed?
A. Yes, sir.
Q. And Oliver Crane?
A. Yes, sir.
Q. That is in blue ink?
A. Yes, sir.
Q. And that was witnessed by you in blue ink?
A. Yes, sir.
Q. Were not the written fillings in of that consent and your two signatures, and the signatures of John Foney, jr., and Oliver Crane, all made in blue ink?
A. It seems to be.
Q. That was dated September 18th?
A. Yes, sir.
Q. Now, do you still say that was got in the winter?
274 A. I mean to say I do not know when it was got.
Q. Look at that paper; what do you say now about it?

A. I could not tell you when it was got, for I don't remember anything about those dates.

Q. Did you get any of these signatures before you were appointed commissioner.

A. I do not think I got any of them. I only witnessed the signature.

Q. Did you witness any signatures before you were appointed commissioner?

A. No, sir.

Q. When were you appointed?

A. I cannot tell you.

Q. Can you say you were appointed as early as September 18th?

A. I cannot tell you.

Q. Did you witness any signatures before your bond was approved?

A. I cannot tell you that. I can explain how those things were taken.

Q. I wish you would explain.

A. Those consents were got in by the commissioners. Now, I did not get the names of those individuals, but after their names were got
275 I went and saw them, and asked them if *if* that was their signature, and if they signed it. They said they did. It might have been three months after they signed the paper. That is the way most of them were got.

Q. Do you know anything about the others?

A. No, sir.

Q. Then you did not see them sign at all?

A. No, sir.

Q. Did you see any of these persons sign that your name is opposite as witness?

A. No, sir; I took their acknowledgments after they had signed it.

Q. Are you sure you are right about that?

A. Yes, sir.

Q. I have here an affidavit annexed to these consents by you, which is as follows: Hiram B. Littell, one of the commissioners of the township of Montclair, in the county of Essex, duly appointed under the act entitled "An act to authorize certain townships, towns, and cities to issue
276 bonds," &c., being duly sworn, says that the several signatures of owners of real estate in the township of Montclair appended to the foregoing consents, and written on the line corresponding with the signature of this deponent, being 15 names in all, are the genuine signatures of the several land owners, and the said consents were signed and acknowledged by the said several land owners in the presence of this deponent, after having been made aware of the contents thereof. Sworn and subscribed, &c. Signed, Hiram B. Littell. Is that your signature?

A. Yes, sir.

Q. You swore, then, they were signed in your presence, and now you say they were not signed in your presence.

A. I think it is true.

Q. Which?

A. What I now say.

By PLAINTIFF'S COUNSEL. Your honor observes exactly where this line of examination is tending, and I understand it is all admitted, sub-

277 ject to an undertaking on the part of my learned friend on the other side to con'ect this plaintiff in some way with these things. I only say here that unless my learned friend says he is going to connect us with it he had better stop.

DEFENDANTS' COUNSEL. I think, after the last examination of this witness and the production of the records, this is a proper examination. I think we have a right to show bad faith and their misconduct in collusion with the railroad officials in issuing the bonds; that is proper cross-examination, and whether that will affect the plaintiff in this suit is a matter to be disposed of hereafter. We have a right to cross-examine the witness.

The COURT. Proceed.

278 By WITNESS. I would like to say, in reference to that matter, that I might have seen some of these names; do you say there is 15?

Q. I don't say anything; you swore there was 15; you now say there was only two or three.

A. My memory was there was only three or four, and the names are there. Some of them I may have seen write; some I know I did not see write; but in every case they acknowledged having signed it.

Q. Who drew the agreement you speak of which provided that these bonds were not to be delivered until certain of the work was done?

A. Cortlandt Parker.

Q. Where was that drawn?

A. In the railroad office.

Q. Was he there?

A. He was there.

Q. Was he the counsel of the railroad company?

A. He was.

Q. Who paid him?

A. At least I understood he was.

279 Q. Well, as far as you know, he was acting for the railroad company?

A. Yes, sir.

Q. Who paid him for the services?

A. I don't know.

Q. Did the commissioners pay him?

A. They did not.

Q. You say that that record contains a true history of all your transactions as commissioners?

A. It was intended to be a true history. As far as my knowledge extends it is a true history.

Q. Did you consider the arrangement which you made, which secured the non-delivery of the bonds until the work was done, an important thing for the township?

A. Yes, sir.

Q. It was an important part of your duty to see to that, was it not?

A. Well, I don't know whether it was our duty; we made it our duty.

Q. Well, it was part of your official action, was it not?

A. Well, in one sense it was; yes, sir.

Q. You did not make a record of that?

A. No, sir.

280 Q. If you filed an answer in the cause which was brought against the commissioners, the chancery suit, and made a true statement of the circumstances attending the delivery of these bonds, would that answer contain any reference to the agreement which Mr. Parker prepared to secure the work being done?

A. Well, I could not answer that, because I don't know what would be necessary to put into an answer of that kind.

Q. You don't know whether your answer contained the whole truth or not?

A. I have no recollection of any answer.

Q. If you did answer, would not the fact that you made such an answer be recorded in these minutes?

A. We should probably have to rely entirely upon our counsel to know what should be put into that answer——(Interrupted.)

Q. I am not asking you about that I am asking what you put in the minutes; you did not consult counsel as to what you put in the minutes?

A. I thought you were asking me about the answer.

281 Q. I did ask you about the answer. The question was this: If you did answer as commissioners to that chancery suit, would not the fact that you so acted be recorded in your minutes?

A. We should have—oh, the answer.

Q. The fact of the answer, would not that be recorded?

A. I have stated several times I have no recollection of it at all.

Q. Does the fact that there is no reference to the answer in your minutes, give you any opinion that you made any answer or not?

A. I should say, if any answer was made, I did not make it; still it might have been made; I don't remember it.

Q. Under whose advice—professional advice—did the commissioners act in executing the agreement and delivering the bonds, of which transaction you have testified?

A. Cortlandt Parker.

Q. And you knew that he was counsel for the railroad co.?

A. Yes, sir; I suppose I did.

Q. (Showing witness a paper dated 17th of March, 1870.) Is that the agreement that was entered into on that day?

282 A. Yes, sir.

Q. Was that drawn by Cortlandt Parker, in Mr. Parker's handwriting?

A. Well, Mr. Parker drew it; yes, I should say so; I saw him writing at the table.

(Defendants' counsel offered the agreement of March 17th, 1870, between the commissioners and the railroad co. in evidence.

Plaintiff's counsel objected to the same as being incompetent until it was connected with the plaintiff.)

By PLAINTIFF'S COUNSEL. I only examined this witness in general as to the fact of the issue of the bonds. Then Mr. McCarter has gone on to the consideration they received and all those matters, all of which is subject to my objection on the general principle. We do not care if they did not get a consideration of two cents; it is nothing to us.

283 Whatever fraud or illegality there was, that is a matter outside

of the record, as far as we understand, except, as I understand, that the undertaking on the part of my learned friend is that at some stage in the cause to show we had notice.

DEFENDANTS' COUNSEL. We cannot make any such stipulation as that, but I submit to the court this agreement is competent for the purpose of contradicting this witness on cross-examination, and to show that he has said what could not possibly be true. He stated that there was an agreement in writing. This agreement is competent to show that the facts stated by this witness from memory cannot possibly be true.

284 PLAINTIFF'S COUNSEL. I call on these gentlemen to say now, do you mean to connect us with any of these matters? If you do, go on; if not, stop here, because your evidence is incompetent; it makes no difference to us as bona fide owners before the court what the consideration was. These matters of defence have been overruled over and over again, and I understand (this is a matter of defence) my learned friend to say here he does not expect to connect us with it; if he does let him go on, but if he does not let him stop.

By the COURT. Proceed with the examination—the paper is admitted.

(Defendants' counsel read the agreement, and the same was marked Exhibit A, on defendant's behalf, and it is as follows:)

285 This agreement, made the seventeenth day of March, one thousand eight hundred and seventy, between The Montclair Railway Company of the first part, Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners duly appointed by the honorable David A. Depue, a judge of the circuit court of Essex County, New Jersey, under the provisions of the act entitled "An act to authorize certain townships, towns, and cities to issue bonds and take the bonds of the Montclair Railway Company," approved April 9th, A. D. 1868, of the second part, and Daniel V. Harrison, Samuel Holmes, and Theron S. Doremus of the third part, witnesseth:

[U. S. int. rev. stamp, 5 ct's. Cancelled: J. H. P. R. M. H. J. E. H. D. V. H. S. H., T. D. Mar. 17, '70.]

Whereas the said commissioners, in pursuance of the provisions of the act aforesaid, have duly executed under their hands and seals the bonds of the township of Montclair Essex County, New Jersey, to the amount of two hundred thousand dollars—that is to say, two hundred bonds of one thousand dollars each; having duly obtained the consent required by said act, and complied with all the provisions therein specified for the issue of said bonds, which bonds are numbered from one (1) to two hun-

286 dred (200) inclusive, and whereas the said commissioners have in their discretion, and for the purposes mentioned in said act, disposed of all said bonds upon terms advantageous to said township—that is to say, by the sale thereof at par, and having received the aforesaid sum of two hundred thousand dollars in cash, have, in compliance with said act, invested the said money in the purchase of bonds issued by the Montclair Railway Company aforesaid, for the purpose of building their road, making said purchase nevertheless in faith of this agreement, and the provisions herein contained; and,

Whereas it is desired by said commissioners in behalf of said township of Montclair to secure the immediate commencement of said railway within said township and the speedy completion thereof by the route herein spe-

cified, and to that end the said commissioners and the said railway company have agreed that the said railway company, now being owners and possessors of said bonds, shall nevertheless only use the same or the avails thereof, when and as money shall be expended by or in behalf of said company in procuring or constructing said railway upon said route:

287 Now, therefore, in order to effectuate the premises, and in consideration of one dollar by each of said parties hereto to the other paid, of the said purchase of said railway bonds by said commissioners, and of their mutual covenants with each other herein contained, the said parties hereto do hereby agree and covenant each with the other as follows—that is to say:

I. The said The Montclair Railway Company do hereby covenant and agree with the said commissioners, party hereto of the second part, acting for and in behalf of said township of Montclair, that they will without delay enter upon, proceed with, and complete the construction of their said railway within said township of Montclair in accordance with the recent survey of the route thereof made according to the description contained in a certain circular addressed to the committee of citizens of Montclair, in the matter of the Montclair Railway Company, dated September 10, 1869, which description is as follows: "The road will enter the township of Montclair from Bloomfield near the house known as the Wakeman property, thence by a suitable route to a point near the junction of

288 Walnut street and Tony's Brook, at which point will be the main depot for Montclair, thence running near the line of Tony's Brook and nearly in a straight line to Watchung avenue, crossing the same at a point near a large chestnut tree, with a depot at or near said crossing of Watchung avenue, thence to a point a little westerly from the Speertown school-house, near to which point will be located a depot; thence on a line between Valley road and Montclair avenue, toward the Clove, so called, with a depot southeasterly from the summit of said Clove;" and they, the said The Montclair Railway Company, do further agree that they will expend the whole amount of two hundred thousand dollars in purchasing land for said railway and depots within the township of Montclair, and in constructing said railway and depots, if such sum be therefor required, or that if after such purchase of said land and construction of said railway and depots upon said route, any portion of said two hundred thousand dollars, the amount of said bonds, shall be unexpended, the excess shall forthwith be laid out upon that part of the line of said railway connecting with said route above described on the east, and they, the

289 said The Montclair Railway Company, further agree that said railway and depots upon the route aforesaid shall be constructed in a good and substantial manner, and be completed within two years herefrom.

II. And in order to secure the fulfillment of the said covenants according to their tenor and effect as aforesaid, the said The Montclair Railway Company do hereby further agree with said commissioners, acting in behalf of said township as aforesaid, that they will deposit, and they do, in execution of such agreement and at the time of the ensealing and delivery of these presents, deposit with and in the hands of the party hereto of the third part, mutually selected for that purpose by the other parties hereto, all and each of the said bonds of the township of Montclair, to be held,

kept, and disposed of by the said party of the third part upon the terms and conditions following, that is to say:

[U. S. int. rev. stamp 5c., cancelled. J. H. P., R. M. H., S. E. F., H. B. L., D. V. H., S. H., T. D., Mar. 17, '70.]

Whenever, and as often as there shall be expended by or for the said railway company upon the route and in the manner herein aforesaid for the purchase of land aforesaid, or for the construction aforesaid, the
290 sum of ten thousand dollars (in proof of which the certificate in writing of the engineer of said road shall always be necessary, but not conclusive evidence), said party of the third part shall deliver to the said The Montclair Railway Company, or to their contractor upon their order, ten of said bonds of said township of Montclair, and so from time to time until all of said bonds shall be delivered up, but none of said bonds shall be by said party of the third part delivered up to said railway company, or to their order, except upon said expenditure of money as aforesaid, provided, always, nevertheless, that the said The Montclair Railway Company shall be at liberty at any time to substitute money at the par value of said bonds equal to the amount thereof, respectively, for any or all of them, on payment of which money to them said party of the third part shall deliver up bonds to the same amount to said railway company and such money shall thereupon be forthwith deposited by said party of the third part in some solvent trust company, and only paid out thence from time to time upon the same terms and conditions as herein provided for the delivery up by said party of the third part of said bonds.

291 III. And the said party of the third part hereby acknowledge themselves to have received the said bonds of the Inhabitants of the Township of Montclair, numbered as aforesaid, from one (1) to two hundred (200), respectively, and amounting together to two hundred thousand dollars, par value, upon the conditions aforesaid, and they agree with said party of the first part that they will deliver up the same, or the moneys which as aforesaid may be substituted therefor, to them, the said railway company, according to the agreement above set forth. And they, the said party of the third part, do further agree with the said party of the second part not to deliver up any of said bonds, or such money substituted therefor, except as aforesaid.

IV. It is further agreed and understood between the parties that in case the work upon said railway shall for any cause arising out of the neglect or fault of the said railway company be suspended at any time for the space of two years, then said party of the third part shall and will deliver up to the party of the second part all the bonds of said township which shall then remain in their hands, if by said party of the
292 second part demanded, in exchange for an equal amount of said railway bonds, which last-mentioned bonds they will thereupon deliver to said The Montclair Railway Company.

In witness whereof the parties of the second part and of the third part have hereto set their hands and seals, and the said The Montclair Railway Company have hereto set their corporate seal and caused the

name of their president to be hereto affixed, the day and year first aforesaid.

{SEAL OF MONTCLAIR RAILWAY COMPANY.} J. H. PRATT, *Pres't.*

R. M. HENING [L. S.]
JARED E. HARRISON. [L. S.]
HIRAM B. LITTELL. [L. S.]
DANIEL V. HARRISON. [L. S.]
SAM'L HOLMES. [L. S.]
THERON S. DOREMUS. [L. S.]

Sealed & delivered in presence of—
GEO. S. DWIGHT.

(Endorsed:) Agreement between The Montclair Railway Co., Robert M. Hening, Jared E. Harrison, and Hiram B. Littell, commissioners, and others. March 17th, 1870. Def'ts' Exhibit A. S. D. O., cl'k. Dec. 2, '78.

293 By DEFENDANTS' COUNSEL. I now offer the records of the proceedings of the commissioners upon the same ground upon which I offered the others, as a contradiction to the statements made by the witness here as to the mode of disposing of these bonds. It is competent as the question of the credibility of the witness before the jury, the record from which he testifies. The witness produced the record at the request of the other side and testified upon it, and we have the right to put it in evidence.

By the COURT: It is admitted, as far as the memorandum in the book is concerned, to be used by counsel to contradict this witness. Of course the whole book is not in evidence. I understand counsel to call witness' attention to the record of March 24th.

DEFENDANTS' COUNSEL. Yes; and also March 16th. I want to show, also, this book contained no record whatever of the operation of this contract with the three trustees.

294 By the COURT: Did the witness state that as a fact?

DEFENDANTS' COUNSEL. I do not remember whether he did or not. The book is the best evidence.

By the COURT: Yes; the book is the best evidence of it, of course.

Q. Now, Mr. Littell, did the trustees keep a cash account—the commissioners?

A. Yes, sir.

Q. Who kept that?

A. I did.

Q. Was that correctly kept as to dates?

A. It was intended to be correctly kept.

Q. Can you remember from the cash account which you kept when you received the cash for the sale of the bonds?

A. I can't remember without seeing the cash account.

Q. Now, sir, can you say when you received it?

A. That was on the 17th.

Q. The cash account?

A. Yes, sir.

Q. When was that record made?

295 A. Immediately.

Q. At the time?

A. Not that day; the next day, I guess, after the 18th. I got home on the 18th, and made it immediately.

Q. Now, why did you enter on the 17th that cash received if you received it on the 18th?

A. I can't tell you.

Q. Do you mean you can't remember, or you don't want to tell?

A. I want to tell everything I remember. I can't remember. There seems to be a difference in the date there; one is the 17th and the other 18th. It was not intended to make any difference.

Q. You say there is a difference in date. Where is that difference now?

A. Between that cash-book and what I stated.

Q. And your present testimony?

A. Yes, sir.

Q. That is what you mean by that?

A. Yes, sir.

Q. After seeing that cash-book, do you still adhere to your statement that the transaction was done on the 18th?

296 A. We went to New York on the 17th, and it took us two days to do this business.

Q. I don't want all that over again. Can you not answer my question, if you still adhere to your former statement that the transaction was made on the 18th and the cash received?

A. My recollection of it is the 18th, that is, we issued the bonds on the 18th and sold them on the 18th, although we were two days about it—the 17th and 18th.

Q. When next did you meet after the 24th of March?

A. I cannot remember, sir.

Q. Can you state by looking at your record?

A. After the 14th of March?

Q. After the 24th of March.

A. (Witness examined book.) The next is the 25th April.

Q. There was no intermediate meeting?

A. No, sir.

By DEFENDANTS' COUNSEL. The only parts of this book (referring to Exhibit B) I propose to refer to are the two records of the 16th and 24th of March. I do not care to have any other part of the book put

297 in evidence, and these parts can be copied by the stenographer if necessary.

By the COURT: As far as any of the records contradict this witness, the book is admitted.

The book was then marked Exhibit B on behalf of the defendants. The records of the meetings of the 16th and 24th of March were read, and are as follows:

MONTCLAIR, *March 16th*, 1870.

Pursuant to call, a meeting was held at the town committee room, all the commissioners present. Minutes of previous meeting read and approved. The chairman stated that the object of the meeting was to consult together in relation to the issuing of the bonds of the town. After an extended discussion in relation to the matter, and having satisfied themselves by the certificate of the assessor that the requisite amount of

property owners had signed in favor of bonding, and whereas
298 on motion of Mr. Harrison it was resolved that we issue and dispose of the whole of the bonds of the township of Montclair authorized by the foregoing act, amounting to two hundred thousand dollars, and invest the proceeds in the bonds of the Montclair Railway Company, according to section 3rd of the foregoing act.

On motion adjourned.

HIRAM B. LITTELL, *Sec.*

MONTCLAIR, *March* 24, '70.

The commissioners met; all present. Minutes of previous meeting read and approved.

The following record was unanimously ordered:

On the 17th inst. the commissioners proceeded to New York, and there disposed of the bonds of the township of Montclair at par—say two hundred thousand dollars, and described as follows:

	10	bonds,	$1,000	e'ch,	Nos.	1	to	10,	dated	Mar. 17, '70;	due Mar. 17,	1873.
	10	"	"	"		11	"	20,	"	" "	" "	1874.
	10	"	"	"		21	"	30,	"	" "	" "	1875.
299	10	bonds,	$1,000	e'ch,	Nos.	31	to	40,	dated	Mar. 17, '70;	due Mar. 17,	1876.
	10	"	"			41	"	50,	"	" "	" "	1877.
	10	"	"			51	"	60,	"	" "	" "	1878.
	10	"	"			61	"	70,	"	" "	" "	1879.
	10	"	"			71	"	80,	"	" "	" "	1880.
	10	"	"			81	"	90,	"	" "	" "	1881.
	10	"	"			91	"	100,	"	" "	" "	1882.
	10	"	"			101	"	110,	"	" "	" "	1883.
	10	"	"			111	"	120,	"	" "	" "	1884.
	10	"	"			121	"	130,	"	" "	" "	1885.
	10	"	"			131	"	140,	"	" "	" "	1886.
	10	"	"			141	"	150,	"	" "	" "	1887.
	10	"	"			151	"	160,	"	" "	" "	1888.
	10	"	"			161	"	170,	"	" "	" "	1889.
	10	"	"			171	"	180,	"	" "	" "	1890.
	10	"	"			181	"	190,	"	" "	" "	1891.
	10	"	"			191	"	200,	"	" "	" "	1892.

And on the same day the commissioners invested the proceeds of the sale of the township bonds, viz, the two hundred thousand dollars in the registered income bonds of the Montclair Railway Company, said bonds being guaranteed by the New York & Oswego Midland Railroad Company of the State of New York, which bonds are described as follows on preceding page:

300	Bond No.	7,	for	$10,000,	dated	Mar.	17, '70,	due	Mar.	17th,	1873.
	"	" 8,	"	"	"	"	"	"	"	"	1874.
	"	" 9,	"	"	"	"	"	"	"	"	1875.
	"	" 10,	"	"	"	"	"	"	"	"	1876.
	"	" 11,	"	"	"	"	"	"	"	"	1877.
	"	" 12,	"	"	"	"	"	"	"	"	1878.
	"	" 13,	"	"	"	"	"	"	"	"	1879.
	"	" 14,	"	"	"	"	"	"	"	"	1880.
	"	" 15,	"	"	"	"	"	"	"	"	1881.
	"	" 16,	"	"	"	"	"	"	"	"	1882.
	"	" 17,	"	"	"	"	"	"	"	"	1883.
	"	" 18,	"	"	"	"	"	"	"	"	1884.
	"	" 19,	"	"	"	"	"	"	"	"	1885.
	"	" 20,	"	"	"	"	"	"	"	"	1886.
	"	" 21,	"	"	"	"	"	"	"	"	1887.
	"	" 22,	"	"	"	"	"	"	"	"	1888.
	"	" 23,	"	"	"	"	"	"	"	"	1889.
	"	" 24,	"	"	"	"	"	"	"	"	1890.
	"	" 25,	"	"	"	"	"	"	"	"	1891.
	"	" 26,	"	"	"	"	"	"	"	"	1892.

The bonds purchased by the commissioners are made to mature at the same date (principal and interest), that the township bonds (principal and interest), mature, all of which has been done in accordance with an act to authorize certain townships, towns, and cities to issue bonds and take
301 the bonds of the Montclair Railway Company, approved April 9th, 1868. Said Montclair Railway bonds have been deposited for safe-keeping with the State National Bank of Newark, N. J.

The commissioners having been enjoined from issuing said town bonds,

On motion, the chairman was directed to employ counsel in the matter of the injunction issued by the chancellor.

On motion, a receipt given by the town clerk for certified copy of consent of land owners be placed on file.

On motion, adjourned.

HIRAM B. LITTELL, *Sec.*

Q. Now, after having seen your record, and seen the cash account, both of which enter that transaction on the 17th, you now testify that it took place on the 18th. After all that you have seen, do you now say that the entry in your record on the 17th, and in the cash-book on the 17th, was made by mistake, or that the entry was intentional?

302 A. The entry was not intentionally made.

Q. Whether you intentionally entered on your cash-book and on your record a date different to that on which the transaction was done?

A. No, sir; it was not intentional.

Q. How do you account for its being done; it was a mistake, was it?

A. Yes, sir; we were two days—— (Interrupted.)

Q. Do I understand you to say it was a mistake?

A. It was a mistake. We went to New York on the 17th, and issued the bonds, and my recollection is we sold them on the 18'; it is possible we did it on the 17th, but my recollection of it is the 18th, and from the fact that my memory does not correspond with the book it shows that I have not tried to make a false entry.

Q. How did you come to put the entry on the 17th, unless you made it on the 17th?

A. I suppose we must have made it on the 17th; we had two days to do it in, and I might have taken the first day.

Q. The agreement bears date on the 17th, does it not?

303 A. Yes, sir.

Q. Was that antedated or not?

A. No, sir.

By DEFENDANTS' COUNSEL. I am through with this witness, except one question I have to ask him about a paper which has been sent for, and he may retire from the stand if I have the privilege to ask him that question.

By the COURT. Very well.

Plaintiff's counsel offered the bonds and annexed coupons in evidence.

By DEFENDANTS' COUNSEL. We object to the admission of these bonds, on the ground that the assessor's affidavit is not in compliance with the law, and also upon the ground that the bonds were not registered before they were disposed of by the commissioners, and also because the
304 consents on their face are not in compliance with the act, because they authorize the exchange of the bonds for the bonds of the Mont-

clair Railroad Company's, when the act authorizes no such exchange, and the consents do not, in any respect, comply with the requirements of the act. The second clause of the act says that it shall be lawful for the commissioners to borrow, &c. The consent does not follow the act, and there is no consent to borrow money at all, and they do not appear to be registered before they were disposed of.

By the COURT. With regard to the first and second reasons that the assessor's affidavit does not comply with the law do you propose to connect any knowledge of that with the plaintiff?

By DEFENDANTS' COUNSEL. We do not expect to have direct evidence that will bring to the purchaser of the bonds the knowledge of these facts, but we shall argue that the recital in the bonds was so imperfect that it put anybody upon inquiry as to these facts; and we also claim that
305 the circumstances under which the bonds were taken by them—by E. D. Morgan & Co., and Mr. Dana, the plaintiff, were such as to put them upon inquiry as to the manner in which these bonds were issued. and they were not protected as a bona fide purchaser.

By the COURT. The first and second reasons will be overruled undoubtedly, if the defendant do not connect this plaintiff with the knowledge of these facts, and the third reason is overruled because, in the judgment of the court, the consents are in compliance with the law.

By DEFENDANTS' COUNSEL. Did the court get my objection as to whether they were registered before disposed of?

By the COURT. I shall be obliged to tell the jury as the case stands that if they believe the testimony of Mr. Littell, the bonds were regis-
306 tered before disposed of. The bonds are admitted.

Whereupon defendants' counsel prayed an exception to such ruling and decision of the court, and that the said exception might be sealed and it is sealed accordingly.

JNO. T. NIXON, [L. S.]

Same were numbered to correspond with the number of the bonds, thus bond No. 20, was marked Exhibit No. 20; No. 22, marked Exhibit No. 22, &c.

By Mr. MCCARTER:

Q. (Showing witness a paper dated 6th of June, 1872, purporting to be signed Hiram B. Littell, being the original answer in chancery.) Is that your signature?

A. Yes, sir.

Q. Did you sign and swear to that before Mr. Whitehead?

A. I signed it as I stated above. I have no recollection of it, but
307 this is my handwriting; still I have no recollection of it.

By the COURT. I understand he recognizes his signature to the paper.

By DEFENDANT'S COUNSEL. Yes, he recognizes his signature to the paper.

Q. Look at that; that seems to be a certificate that was sworn and subscribed to on the 6th day of June, 1870, before John Whitehead, master in chancery; do you know any thing about that?

A. No, sir; I do not.

Q. You don't remember putting in any answer to the suit at all?

A. No, sir; I do not.
Q. Did you employ counsel in that suit?
A. No, sir.
Q. Or pay him?
A. No, sir.
Q. "Parker & Keasbey, solicitors and counsel for defendants;" do you remember their being employed for you?
308 A. No, sir; the only thing I do remember is that we empowered Mr. Hening to employ counsel.
Q. Is that Mr. Hening's signature also?
A. I should judge so.
Q. And Mr. Harrison's?
A. I should judge so.
Q. You are acquainted with their handwriting?
A. Only as they appear on these bonds.

JOHN F. TERRY, a witness heretofore produced on the part of the plaintiff, being recalled, deposeth as follows:

Further cross-examination by Mr. MCCARTER:

Q. You told us the other day when you were here that the amount charged by your firm of E. D. Morgan & Co. for the loan on your note was 2 or 2½ per cent; which was it, sir?
A. I don't remember, sir; but my impression is that it was 2½; that is the usual commission.
Q. Have you any doubt that it was 2½?
A. It did not exceed that, because we never charged over that;
309 possibly it may have been 2, but my impression is it was 2½; I feel quite confident it was 2½.
Q. That is your usual rate?
A. Yes, sir.
Q. You said, on your direct examination, that you believed—that you understood these bonds had been sold to Mr. Dana?
A. Yes, sir.
Q. Was that the best knowledge you had about it?
A. Well, Mr. Dana drew a draft upon us to pay for them; that is the only evidence that I have that he bought them, sir. I was not present at the sale.
Q. (Showing witness Exhibit No. 2 for plaintiff.) Is that the one?
A. That is his signature. I have no doubt it is the one, sir.
Q. Do you remember anything about the transaction?
A. What transaction? I did not remember that he drew a draft upon to pay for these bonds until he testified to it while I was here.
Q. You don't remember how it was paid?
310 A. No, sir.
Q. Do you remember whether the bonds remained in your possession or not until he settled with you?
A. I have no recollection whatever. I had no charge of the bonds; they were in the hands of the book-keeper, and I could not say. We have his bonds frequently.
Q. How is Mr. Dana connected with your firm?
A. I don't know of any connection, sir.

Q. Did he have a desk in your office?
A. He has a desk which he sometimes writes at.
Q. Did he bring these bonds at your request?
A. Not at my request; no, sir.
Q. Did you not recommend him to go and buy them?
A. I don't recollect it, sir. I may have said to him the bonds were for sale; very possibly I did. I don't remember giving him any recommendation about the matter, although I know my interest was to have them bring as much as they would at the time.
Q. Don't you recollect now, Mr. Terry, your having recommended Mr. Dana to buy these bonds?
311 A. I do not, sir; I do not think I did; that is my impression.
Q. Do you recollect having a conversation with me about them last summer?
A. Yes, sir.
Q. Don't you remember telling me Mr. Dana had bought these bonds at your recommendation?
A. I don't think I did. I will tell you this, sir, if I did I think it was an error, if I made any such remark to you. I think he may have bought them on my conversation with him, or my telling him they were for sale. If he did buy them on my recommendation it has passed my memory.
Q. How did he pay for them?
A. With his draft on E. D. Morgan & Company.
Q. Is that the only way he paid for them?
A. I only know that from the draft here. I did not know it before.
Q. Do you know whether you received a bill of sale for them?
A. Yes, sir; I saw that at the time.
Q. From Muller?
A. Yes, sir.
Q. Is it Exhibit No. 3?
312 A. I should say that is the one, sir, received at the time. That is my impression.
Q. This says, "Purchased money collected, and bonds delivered to you." Do you know what your firm did about the delivery of those bonds?
A. I do not; our clerk attended to that. He could tell you.
Q. You don't remember about it?
A. No, sir; I don't know whether they were with us or with Mr. Dana. We frequently have his stocks and bonds.
Q. I mean up to the time of the sale?
A. They were in our possession.
Q. Do you know how long they remained in your possession afterwards?
A. I do not.
Q. Has the firm of E. D. Morgan & Co. any interest in this suit?
A. Not a dollar.
Q. Is there any arrangement between that firm and Mr. Dana, that they are to share in the proceeds?
A. Nothing whatever.
Q. Which these bonds shall produce if they shall be collected?
A. None whatever, sir.

Q. You know of none yourself?

313 A. I know of none, and I am sure there is none. Governor Morgan knows nothing about it.

Q. How many partners are there in the firm?

A. Three.

Q. Who besides Governor Morgan and yourself?

A. Mr. Humphries.

Q. How long has Mr. Dana had a desk in your office?

A. Well, I should think, more or less, for 15 or 20 years. He has no desk there; there is a desk he comes in and writes at occasionally, as other people do. He has no permanent desk there.

Q. Well, he is rather more there than other people—than the public?

A. Sometimes he is there two or three days in succession, and sometimes he is not there for a month.

Q. That's all.

Redirect:

Q. Has your firm been in the habit of paying the drafts of Charles Dana for the purchase of stocks and bonds?

A. They have, sir.

314 Q. What amount did you have of his funds to his credit at the time this draft was drawn?

A. Thirty-three thousand three hundred and odd dollars; I think eighty dollars.

Q. How long after that was the draft made entirely good by deposit?

A. Well, three or four days; I think three days.

Recross:

Q. How do you learn that he had that amount on deposit?

A. Because I looked since I was here.

Q. You gave the contents of the books?

A. Yes, sir; the contents of the ledger.

Q. You have no other knowledge of it?

A. No, sir; but we generally keep our books correctly.

(Defendants' counsel moved to overrule the last testimony of this witness about the contents of the books, as incompetent.

The court admitted the same.)

315 To which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Plaintiff's counsel called on defendants' counsel to produce the copy of consents, filed at the town clerk's office, and also the commissioners' bond.

Defendants' counsel produced said papers.

Plaintiff's counsel offered in evidence the copy of consents filed in the town clerk's office of Montclair.

By DEFENDANT'S COUNSEL. We object to the same, on the grounds which are already stated in opposition to the admission of the original consents filed in the county clerk's office.

Whereupon the court overruled the defendants' said objection and

316 admitted the evidence, to which ruling and decision of the court

the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

JAMES W. YOUNG, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. GUMMERE:

Q. Where do you live, Mr. Young?
A. Brooklyn, N. Y.
Q. Do you know George A. Dwight?
A. I do, sir.
Q. Where is he?
A. At present he is in Europe.
Q. Did you see him sail?
A. I did, sir.
Q. How long since?
A. He sailed on the 4th day of October last.
Q. Do you know his handwriting?
A. I do.

317 Q. (Showing witness the attesting clause and signature to a bond of the commissioners of the township of Montclair, to the Inhabitants of the Township of Montclair.) Whose handwriting is that?

A. George A. Dwight.
Q. Have you seen him write?
A. Yes, sir.
Q. Have you ever been in his employ?
A. I was.
Q. You know his signature?
A. Yes, sir.

Cross-examination by Mr. MCCARTER:

Q. Mr. Young, has he not come back?
A. No, sir.
Q. Are you in his employ now?
A. I am not.
Q. How do you know he has not come back?
A. I saw a letter from him last Monday.
Q. Is that the only way you know?
A. Yes, sir.
Q. That will do.

(Plaintiff's counsel offered in evidence the bond, and also the allocatur of Judge Depue endorsed upon it, which was referred to in his testimony.)

318 JEREMIAH COUNSELLOR, a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. GUMMERE:

Q. Where do you live?
A. Newark, N. J.
Q. There has been evidence in regard to the making of an order of ap-

pointment by Judge Depue for commissioners of the township of Montclair. Have you ever seen such an order—or tell us what you know about it?

A. I did see one.
Q. When and where?
A. In the early part of January, 1870.
Q. Who showed it to you?
A. Yes, sir.
Q. Who showed it to you, I say?
A. Spaulding and his wife.
Q. Where?
A. At my house, 14 Bridge street.
Q. You read it?
A. I did.
Q. What did it purport to contain?

DEFENDANTS' COUNSEL. This is also subject to our objection,
319 that the secondary evidence is not proper.

A. It purported to be an order from Judge Depue.
Q. Appointing who, and what?
A. Hening, Littell, and Harrison.
Q. Appointing them to be what?
A. Commissioners.
Q. Of what place?
A. At Montclair.

Cross-examination by Mr. MCCARTER:

Q. Did you take it in your hands?
A. I did.
Q. Did you read it over?
A. I did.
Q. Whose handwriting was it?
A. I could not tell you.
Q. Was there a signature to it?
A. There was.
Q. Was there a seal to it?
A. I think there was.
Q. You remember that, don't you?
A. I think there was.
Q. Was it wax or wafer?
A. I could not tell you.
Q. You did not notice?
A. I could not tell you, sir.
320 Q. Was it a scroll seal?
A. I noticed it was a signature purporting to be that of Depue. Judge Depue.
Q. Are you sure it was Judge Depue; what was the signature to it; what was the name to it?
A. I think it was "Dana, A."
Q. Was it not signed "Judge Depue?"
A. Well, I saw his name there.
Q. Was it signed as "Judge" in any way, I want to know?
A. I believe it was.
Q. I want to know what you remember?

A. My memory is generally pretty good.

Q. Yes; and I want you to remember if there was anything attached to the signatue to indicate he was judge?

A. There was.

Q. What?

A. I think his name was there in connection with his official position.

Q. What words were used in connection with his name to show what his official position was?

A. I am not lawyer enough to define them.

Q. You can remember, can you not; you don't have to be a lawyer to remember?

321 A. Summons have been served on me, and it seemed to be just such a signature as I had seen.

Q. It seemed to have the same signature as there was on papers served on you, summons?

A. Yes, sir; it looked like other signatures of his I have seen.

Q. Where did you see it before?

A. I think one or two have been left at my house.

Q. As summons?

A. Yes, sir.

Q. In cases of debt?

A. Yes, sir.

Q. And these signatures looked like this?

A. Yes, sir.

Q. And you think Judge Depue signed them?

A. Yes, sir.

Q. Were these court summons that were served on you?

A. I cannot tell you.

Q. In the court where Judge Depue was?

A. I think there has been some.

Q. And they had the same sort of signature to them as this had?

A. I think they had.

Q. What did the papers recite; what did the recitals contain?

A. The appointment of these three men.

322 Q. Anything else; cannot you give us the language?

A. I do not think I could.

Q. Cannot you tell us how many lines there were, or how much of a page it covered, or whether there was more than a page?

A. It did not seem to be a very large paper.

Q. About how large?

A. I do not think I could tell you.

Q. About the size of an ordinary court summons?

A. Larger than that, I think.

Q. (Showing witness a piece of legal cap.) Was it as large as that, that is about seven inches long?

A. I think it was.

Q. Was it on a whole or a half sheet of legal cap or foolscap?

A. That I cannot tell you.

Q. You do not remember?

A. No, sir.

Q. And you don't remember what it contained, except the appointment of those three men?

A. If I had known I should be called upon here I would have been very particular to measured it, but it did not occur to me; I would
323 be asked anything about it.

Q. Measure what?

A. The paper.

Q. If you had known you would be called upon, you would have measured it?

A. Yes, sir; if I had anticipated anything of the kind, but I did not.

Q. How many times have summons been served upon you?

A. I cannot tell.

Q. More than once?

A. I think they were.

Q. Did you ever see one that had Judge Depue's name signed to it?

A. That is not fair is it?

Q. I want to know if you ever saw a summons which was served on you with Judge Depue's name on it?

A. Yes, sir.

Q. I should like to see one.

A. I think I have all here, and will let you see it. I could not swear to his writing, but if I have here it I will favor you. Any information I can give you I will do it.

Q. Nothing mean about you, eh?

A. I am sorry I ever saw any of them. (Examines papers). I
324 thought I had one here, but I have not.

Q. How did these gentlemen come to show this to you—this paper?

A. They were at my house very frequently. Come to consult me or talk with me, and inform me what they had done.

Q. Could you tell whether this order had been recently made?

A. My impression is it had been the day before or that morning; I could not tell which.

Q. Cannot you tell the precise date of it?

A. I could not.

Q. But it was a fresh thing—a new thing.

A. Yes, sir.

Q. The appointment had been recently made?

A. I could not tell whether that day or the day before.

Q. One or the other?

A. That is my impression.

Q. How do you fix the date of it, Mr. Counsellor; how do you tell it was the first or second or third of January, instead of the first or second or third of February or December?

A. I know Mr. Dwight helped himself to a few things that were on the table.

325 Q. He might have been likely to do that at any other time as well as that?

A. If they had been there, in all probability.

Q. What was there to fix it that there were things on the table early in January rather than in December? You have things on the table every morning, don't you, when you have breakfast?

A. Not so much as we had at that time of the year.

Q. I mean what was there to settle it was in January rather than February?

A. My young folks had been keeping New Year's, and there were a few things on the table, and Mr. Dwight helped himself.

Q. Was that the second of January?

A. I could not tell.

Q. Was it the second week?

A. I could not tell.

Q. How long would your young folks take to eat what was on the table on the 1st of January?

A. They were pretty well gone, then.

Q. What else makes you remember?

A. It was pretty cold weather.

Q. It is cold in December sometimes?

A. Yes, sir.

Q. And in February, too?

326 A. I have seen cold weather then.

Q. Can you give any other circumstances by which you can tell it was January?

A. It was in 1870; I recollect that.

Q. How do you recollect that?

A. Well, I don't know as I can tell you all the circumstances connected with it.

Q. Can you tell us one that makes you say it was in 1870?

A. I was there myself.

Q. You were there in 1869, too?

A. I think I was.

Q. And in 1870?

A. Yes, sir.

Q. How does that tell you, because you were there yourself, that it was in January?

A. Those gentlemen were with me.

Q. They might have been there some other day; they came there often?

A. They did. I sometimes wish I had not seen them so often.

Q. Why did they come to you; what had you to do with the railroad?

A. Well, I was interested.

Q. How?

A. To see the enterprise accomplished, and see the work going ahead.

327 Q. What gave you an interest? What caused you to have an interest in it?

A. Well, I was like a good many of my neighbors, trying to make some money out of real estate transactions.

Q. Where was your real estate that was affected by this railroad?

A. I did not say the real estate was affected in any way.

328 Q. Did you own real estate in that neighborhood, or how was you affected?

A. I owned a little of it.

Q. Whereabouts?

A. In Newark—Kearney.
Q. Was it all in Newark?
A. Some in Orange.
Q. Where was your real estate in Kearney?
A. The real estate in Kearney that I was interested in was in the rear of what is known as the Brown farm, the Rutherford property.
Q. Did you own that?
A. I owned it in connection with other parties.
Q. What was the real estate in Orange?
A. That was up near Wyoming.
Q. That is nowhere near this railroad; that is near Milburn?
A. The Watchung road used to run in connection with that.
Q. That was a horse railroad, was it not?
A. It was none at all—it was on paper a good deal.
Q. Had you been engaged in getting signatures for these consents in Montclair?
A. I think not.
Q. Had you been in any way?
329 A. I had talked with people if they asked me about it.
Q. Had you procured any signatures?
A. I think not; I am not aware that I did.
Q. Why, then, did Dwight and Spaulding report to you what they had done?
A. I suppose they thought I would be anxious to know.
Q. Why would you be annious to know?
A. Some of my friends were interested in real estate.
Q. Oh, that's all.

Plaintiff thereupon rested his case.

DEFENDANTS' COUNSEL. I do not know, if the court please, under the circumstances, if it is worth while to occupy the time of the court and counsel in opening the case to the jury. Our past experiences in cases of this kind shows that probably the case will be determined very largely on questions of law; so we shall proceed to put in such testimony bear-
330 ing on the issues of the cause as counsel are advised it is proper for the defendant to offer, of course, under the ruling of the court as to *to* the admissability of the testimony.

AZY VAN GIESON, a witness produced on behalf of the defendants, being duly sworn according to law, testified as follows:

Direct examination by Mr. MCCARTER:

Q. Where do you live, Mr. Van Gieson?
A. In the township of Montclair, sir.
Q. And how long have you lived there?
A. Sixty years on the 29th day of last June.
Q. Were you ever elected assessor of the township of Montclair?
A. I was, sir.
Q. When, first?
A. I have no recollection of the year, only my memory has been refreshed by what has taken place here. According to that it was 1870, the spring of 1870. I succeed' Mr. Zenas S. Crane.

Q. Do you remember on what day of the month you were elected?

A. I do not, sir.

331 Q. Can you tell us on what day of the month the annual town meeting of the township of Montclair is held?

A. I do not know that I can correctly; it runs in my mind that it has, within a few years, that it has taken place on the first Monday after the first Tuesday; I think that is the way I have heard it worded.

Q. What day of the month would that bring it on in that year?

A. I don't know.

Q. The act of the legislature says it shall be held on the second Monday in March of each year.

DEFENDANTS' COUNSEL. We ascertained on the former trial what day of the month that was, did we not, Mr. Gummere?

PLAINTIFF'S COUNSEL. Yes; we did.

By Mr. BLAKE. Yes; it was the 14th.

By Mr. MCCARTER. My recollection of it is that it was on the

332 14th inst.; I don't know.

Q. When were you sworn into office in that year?

A. The next day after the election, I think.

(Showing witness a paper purporting to be his official oath for the year 1870.) Is that your signature to that?

A. That is my signature, sir.

Q. Does that refresh your memory as to the time when that was done?

A. No, sir; but if my recollection serves me right it was the next day after the election, let that day be what day of the month it was.

Q. Is that the official oath which you took as assessor of Montclair Township for that year?

A. I don't think it is exactly what I said; it comprises what I said.

Q. Did you take more than one official oath that year as assessor?

A. No, sir.

Q. Is that the official oath you took?

A. Well, that is my signature to that oath. I say I don't think it is worded exactly as said I would do, but it comprises what I—— (Interrupted.)

333 Q. I' that your official oath for that year?

A. Yes, sir.

Q. That is?

A. Yes, sir.

Q. What do you mean by saying it does not contain exactly what you said. Explain yourself, please.

A. Well, sir, I was called upon the next day after the election. I was a considerable distance, at home at work, not knowing I was elected assessor; Jared E. Harrison came to me and wanted to know what I was doing ing there, and told me to go down to the village and attend to my business; that I was assessor. I went down there and they placed before me a copy of the law of the duty of assessor, and wanted me to take that oath.

Q. What law?

A. The law contained in—— (Interrupted.)

Q. In reference to bonding the township?

A. No; the duties of assessor, which requires every assessor to assess the property in the township where he is elected according to its fair and full value; I asked them if they wanted me to take that oath, and they said

they did. I asked them if they wanted me to assess according
334 to that, and they said "No;" I said then I would not take it. I said, "You understand, gentlemen, what this is; the assessor generally assesses from 40 to 60 per cent. of the full value; if you want me to assess the full value, you see where it will throw your taxes in this township; if you want me to take that oath I will do it; if not, I will say this, I will say I will faithfully, according to the best of my judgment, according to what information I can get, assess the township of Montclair in accordance with the ratio of the adjoining townships," which I did.

Q. Before whom did you take the oath?

A. Charles B. Morris.

Q. Was he acting as justice of the peace?

A. Yes, sir.

Q. Did you take more than one official oath? I think you said you did not.

A. I did not. I have no recollection of more than one.

Q. Looking at this paper, you think it was the official oath you took?

A. Yes, sir; this is the one; this seems to be on March 17th. I
335 say this occurred the next day after the election. I may possibly be mistaken; it may have been the second day after, but I know I went down the first day, but I can't say I signed this paper until the second day after.

Q. Mr. Jared Harrison came to you and asked you to come down and attend to your duties?

A. Yes, sir.

Q. Can you tell at what time of day you signed that affidavit, swore to it?

A. I cannot, sir.

Q. Did you sign any other affidavits at the same time?

A. Not that I know of. I could not tell positively.

Q. (Showing witness eight affidavits found endorsed on the original consents which have been offered in this cause, being Exhibit 15 for plaintiff.) On the day after your election or on the day when at the request of Mr. Harrison you went down to Montclair, whenever that was, did you transact any business with reference to the bonding of Montclair township?

A. I don't know whether I did it that day or the day after. I was down there two days.

Q. And what did you do in regard to that?

336 A. In regard to what?

Q. In regard to bonding Montclair township on the day when you did go down, whenever that was?

A. I looked over the signatures and examined the certificates, and signed these certificates, I supposed.

Q. There is one you see? (Referring to Ex. 15 pl't'f.)

A. That is mine.

Q. There is another.

A. Yes; and that is mine, and that, and that, and that, and that; yes, sir, and that.

(Witness' last answer referred to Exhibit 15 for plaintiff.)

Q. These are your affidavits on these consents?

A. Yes, sir; my signatures.

Q. Who was present when you made these affidavits?

A. Mr. Jared E. Harrison, Robert M. Henning, and Charles B. Morris are the three that my memory serves me as being there; as to any others I have no recollection.

Q. Where was it?

A. It was in Charles B. Morris' building, or his father's building.

Q. At whose request did you go there?

337 A. Well, it was nobody's request; it was Jared E. Harrison's command; he told me to go, and that I was elected assessor, and had these duties to perform.

Q. Was that the day you did this business?

A. I am not certain, sir.

Q. Was it the same day you took the other oath?

A. I don't remember, sir; I think I took this the first day.

Q. Did you not go down there to transact some business in reference to bonding the township before the 17th?

A. I don't know, sir, what day of the month it was I went there first, whether it was the 16th or 17th.

Q. Before making the affidavits on this Exhibit No. 15, what steps did you take to inform yourself as to whether the consents contained in this document were signed by the requisite number and amount of taxable property and land owners?

(Plaintiff's counsel objected on the ground that it was going behind the official certificate, and unless the plaintiff was connected with knowledge of it in some way.)

338 Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Did you, before making these affidavits, cause to be prepared an assessment roll by extracting from the assessment roll of the township of Bloomfield for 1867 all that related to any assessment of persons or property in the territory embraced in the township of *of* Montclair before you made those affidavits?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court the defendants' counsel prayed an exception, and that the said exception might be sealed,

339 and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Did the commissioners, Messrs. Henning, Harrison, and Littell, prepare and submit to you any such assessment roll?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

340 Did you, before making the affidavits endorsed on those consents, make use of any such assessment roll as I have described?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Did you make any inquiry to ascertain whether the persons whose names were signed to the consents on which you endorsed your affidavits were owners of, or represented as agent or president, the property in respect to which they signed?

(Plaintiff's counsel objected.)

341 Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Did you know, or had you been informed at the time you made your affidavits, that your predecessor in office had refused to make the affidavits to bond the town?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

342 Q. Was the business of making the affidavits endorsed on those consents transacted by you under circumstances of haste or unusual expedition?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be , and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Were you informed at the time of making the affidavits, or before they were made, that an injunction was apprehended to prevent the issuing of the bonds referred to in the consents?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants'
343 counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Were you, at or before the time of making your affidavit, informed that some persons whose names appeared as signers on these consents had

withdrawn their consents or requested their names to be withdrawn from the consents?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

344 Q. Did you, before making the affidavits, or at the time of making them, have any conference with Mr. Crane your predecessor, on this subject?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JOHN T. NIXON. *J.* [L. S.]

Q. Did you have any such conference, at the time of or before making the affidavits, with Joseph K. Oakes, the assessor of the township of Bloomfield for the year 1867?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants'
345 counsel prayed an exception, and that the said exception might be sealed, and it is sealed accordingly

JNO. T. NIXON, *J.* [L. S.]

Q. Mr. Van Gieson, the records of the proceedings of the commissioners for bonding Montclair Township of a meeting on March 16th, 1870, have been put in evidence in this cause, that the commissioners satisfied themselves by the certificate of the assessor that the requisite amount of property owners had signed in favor of bonding; did you furnish to the commissioners on the 16th day of March, 1870, a certificate that the requisite amount of property owners had signed in favor of bonding?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

346 The COURT. It has been said so often that I hardly care to repeat it, these questions are all overruled because the defendants do not undertake to connect the plaintiff with knowledge of the facts.

DEFENDANTS' COUNSEL. We propose to show that the plaintiff is in such a position that he has not entire immunity, but we do not propose by direct evidence to connect the holder of these bonds with knowledge of these facts.

Q. That is all, Mr. Van Gieson.

Not cross-examined.

PLAINTIFFS' COUNSEL. Before the case goes any further your honor wlil recollect that I offered the statute of New York. That is in the case, I understand, if not, I will offer it now.

The COURT. That is in.

347 Defendants' counsel offered in evidence the official oath of Mr. Van Gieson, sworn to on the 17th of March, 1870, as assessor, and the same was marked Exhibit C on behalf of the defendants.

JARED E. HARRISON, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MCCARTER:

Q. You reside in Montclair Township?

A. Yes, sir.

Q. Did you act as one of the commissioners from Montclair Township to issue the bonds that are now in suit?

A. I did.

Q. What did you do in respect to obtaining signatures to the consents which are in evidence here, the original consents?

A. I went from house to house and had interviews with the owners of the property and got their consents.

Q. When were you appointed commissioner?

A. I cannot tell.

Q. As near as you can tell?

348 A. I cannot give you any definite ; it was some time ago, and it is not matter I have charged my mind with at all; that is, the time that I was appointed, or that I was appointed only after it was common report; that is, I was notified that the court had appointed us three as commissioners.

Q. Who notified you?

A. I cannot answer that definitely.

Q. Did you ever see the appointment?

A. No, sir.

Q. How soon after you were notified did you commence discharging the duties?

A. What part of the duties?

Q. Any part of the duties.

A. Well, I cannot answer that question. The duties connected with the office, I suppose—perhaps the first duty of mine would be to take the acknowledgement of the parties that had signed the consent. Here is the list brought to us, and the parties brought before us and acknowledged they signed it. That is what we thought the law was—required it.

Q. Is that what you meant you did when you said you went

349 from house to house and got the consents?

A. Oh, no. That is how the signatures were obtained, and finally, if there was any I had not obtained myself, I took the acknowledgment that they had signed it.

Q. Did you take the acknowledgment of some and write your name down as witness to such signatures whom you did not see sign?

A. Well, I don't recollect. I think it is very likely I did.

Q. Do you know when you did that whether you did it at or about the dates which the consents bear?

A. No, sir.
Q. You do not know about that?
A. No, sir.
Q. Some of these consents bear date August 20th, 1869; did you commence to act as early as that?
A. I should think not, sir. I cannot answer you positively. These signatures were taken, and finally, when we ascertained we had enough and over, why we then proceeded to take acknowledgements, you know, when the parties all do acknowledge that they signed.
350 Q. And that was after the signatures had been obtained?
A. Yes, sir; that is, it might be some months.
Q. (Showing witness bond of commissioners, being Exhibit 14 for plaintiff.) Is that your signature to this bond?
A. Yes, sir.
Q. This bond appears to have been approved by the judge on the 25th of January, 1877; did you obtain the acknowledgements to the signatures before or after that?
A. I cannot answer that question.
Q. You do not remember?
A. I do not remember anything about it, sir.
Q. What did you do under this appointment—proceed to obtain signatures or to get acknowledgements to previous signatures?
A. Well, I hardly know how to manage such a kind of question. I told you if I wanted your signature I would go to your house and make it known to you what I wanted. If you refused I did not get it; if you consented I got your signature.
351 Q. You did that with some, and then with others you got their acknowledgements?
A. If it had been obtained by some other person I took their acknowledgements.
Q. So that the fact is that in some cases you have acknowledged when you had not seen them sign?
A. My impression is it is so.
Q. How many?
A. I cannot answer.
Q. Can you not give us it approximately?
A. It is some time ago, and a matter I have not charged my memory with.
Q. Did you not take some of those acknowledgements before the bond was approved of by the judge?
A. Before the bond—— (Interrupted.)
Q. Was approved by the judge?
A. What bond do you mean, sir?
Q. The bond I just now showed you, which appears to be approved January 25th, 1870.
A. The bond that we gave?
Q. Yes.
A. That we gave security to the township?
Q. Yes, that one.
A. I cannot tell.
352 Q. That is the 25th of January; now cannot you remember by

the season of the year, or something, that you got those consents before that time?

A. I cannot tell; the bond that you speak of. I cannot answer the question.

Q. Do you mean you cannot answer because you do not remember?

A. I cannot remember now about it; it is not a matter I charged my mind with at all.

Q. Who was the assessor of the township of Montclair for the year 1870?

A. Was that the year before? I cannot answer.

Q. For the year 1869, the year before the bonds were issued.

A. Zenas S. Crane; that was before Mr. Van Gieson.

Q. Who next after him?

A. Van Gieson.

Q. No; after Crane.

A. Van Gieson; the one who has just been on the stand.

Q. Mr. Van Gieson testified you came after him, one or two days after town meeting, to get him to go and discharge his duties; do you remember that?

353 A. Yes, sir.

Q. State what that was.

A. I went, I think, at the request of Mr. Pratt; I did not go of my own accord. I was requested to go and notify Mr. Van Gieson his presence was wanted to get the certificate. I took my horse and carriage and notified him.

Q. When was that?

A. I cannot give the date, but this I done.

Q. What was done after that about it?

A. Well, he was at the extreme upper end of the township, and, I think, came along down with me.

Q. Where did you go?

A. Down to the village where this meeting was held. Mr. Henning and others.

Q. Who were the others?

A. Well, I cannot tell particularly whether I went there; that is, I recollect of going to Van Gieson and notifying him that his presence was wanted there, and that I went there.

Q. Now, I want to find who else was there.

A. Mr. Henning was there, and I cannot tell——

354 Q. You say you went for Van Gieson at the request of Mr. Pratt; who was Mr. Pratt?

A. He was president of the railroad; he was called president.

Q. Van Gieson came down with you?

A. I think he did.

Q. It appears by the record kept by Mr. Littell, as secretary of the commissioners, that on the 16th of March, 1870, the commissioners satisfied themselves by the certificate of Mr. Van Gieson that the requisite amount had signed the consents; state, if you please, what the commissioners had from Mr. Van Gieson to satisfy them about that.

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the

question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

355 Q. Did the commissioners before issuing these bonds—cause to be prepared an assessment roll for the township of Montclair, by extracting from any assessment roll for the year 1867 of the township of Bloomfield all that related to any assessment of persons and property in the territory embraced in the township of Montclair?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

356 Q. Did they prepare such an assessment roll from the assessment roll for the year 1869, of persons and property embraced in the territory of the township of Montclair?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection and refused to admit the question; to which ruling and decision of the court, defendants, counsel prayed an exception, and that said exception might be sealed; and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Did the commissioners in determining whether the requisite amount of land owners had signed the consents make use of any such assessment roll prepared from the assessment roll of Bloomfield for either 1867 or 1869?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection and refused to ad-
357 mit the question; to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed; and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

DEFENDANTS' COUNSEL. We now, to save a series of useless questions offer to show by this witness that neither the assessor nor the commissioners in determining whether the requisite amount had signed for the purpose of bonding the town under the act, prepared, or caused to be prepared or made use of, any assessment roll, prepared from the assessment roll of the township of Bloomfield for either the years 1867 or 1869, or any other year, by extracting therefrom so much as relates to the persons and property embraced within the territory of Montclair, and that they issued the bonds without having performed or attempted to perform that duty imposed upon them by the act.

358 The COURT. You had better put the question.

DEFENDANTS' COUNSEL. I will put one other question, probably not embraced in the offer, the object of this offer being that we may show the court what we expect to show by this witness.

Q. Did the commissioners or the assessor before the issuing of these

bonds make use of any assessment roll prepared from the assessment roll of the township of Montclair for the year 1869, or from any previous assessment roll made from the township of Montclair?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection and refused to admit the question; to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed; and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

359 Q. Did you go to New York and participate in the disposition which was made of the township bonds?

A. I did.

Q. When did you go?

A. Well, I could only say from—I have no record of it—we went undoubtedly the 17th of March.

Q. What did you go for?

A. We went over to dispose of the bonds.

Q. What time did you go?

A. What time of the day?

Q. Yes.

A. Probably in the morning.

Q. And at what time did you arrive in New York?

A. We went, I presume, straight to the railroad office.

Q. And what time did you get there about?

A. I do not recollect.

Q. Can you tell from what you were occupied in or did during the day, whether you were there in the morning?

A. Oh, we were there in the morning, the whole day was spent there.

Q. About how early in the morning did you get there?

360 A. I suppose we got there about 9 o'clock.

Q. At what time would you have to leave Montclair to get there at that time?

A. It might take a little more than an hour.

Q. Why did you go to the railroad office?

A. We went there through the influence of Mr. Pratt.

Q. President of the railroad?

A. President of the R. R. I went there myself personally by direction, and had no expectation of selling the bonds when I left home.

Q. What induced you to go to the railroad office?

A. Because it was the place we were directed to go.

Q. By whom?

A. By Mr. Pratt.

Q. And you did not expect to sell the bonds when you got there?

A. I did not expect to.

Q. Did the other commissioners get there about the same time?

A. Yes, sir.

Q. Did Mr. Littell go with you?

A. Whether he went in the same car with me or not I don't know; we all went directly there.

361 Q. And arrived there together?

A. Yes, sir.

Q. Whom did you meet there first?

A. I cannot tell; Mr. Pratt and Mr. Spaulding, and whether Mr. Dwight was there or not I don't know; Judge Law was there occasionally; and I cannot tell, there might have been others.

Q. Did you not know when you went there you were to dispose of the bonds; that that was the purpose of your going?

A. I knew that was the purpose, because that was what was required; we should sell the bonds.

Q. Had you up to that time agreed to any arrangement to sell the bonds?

A. No, sir; there was the difficulty; all could not agree; if we sold the bonds we must make a bona fide sale of the whole of them?

Q. Why?

A. We were under obligations to the people not to let them have them faster than they did the work; here was the difficulty, and the consequence was the first day was entirely spent without doing anything;

362 various proposals that were not accepted were proposed; and finally, the next day, I think—I think that I am correct—the thought had occurred to me of the appointment of these trustees, and I made the proposal to the railroad company.

Q. Well, why was it necessary to dispose of the whole of them?

A. Well, the reason was the bonds were to be issued in aid of the railroad; and a part of them, if they were going to enjoined, they wanted the whole of them; the use of the whole of them.

Q. Then it was to avoid the injunction that you issued the whole of them?

A. It was to avoid the injunction that we went there.

Q. That was the object of your going there, was it?

A. Certainly it was.

Q. What reason had you to suppose there would be an injunction?

A. All the reason was what I was told; Mr. Pratt told me, and it was talked of there.

Q. What did Mr. Pratt tell you?

363 A. That they probably would be enjoined, and that it would prove fatal to the railroad, the delay.

Q. When did he tell you that?

A. Well, it was about the time that he was soliciting us to go to New York and issue the bonds.

Q. Before it, after you went for Mr. Van Gieson?

A. It was after Mr. Van Gieson had given us the certificate.

Q. It was after he had gave the certificate?

A. Oh, we had the certificate certainly.

Q. Then you got the certificate before you went to New York?

A. Oh, certainly.

Q. The day before?

A. I cannot answer that.

Q. Well, how long before; can you tell?

A. I cannot; all I recollect is I did not participate in the court; those that had signed—Mr. Henning officiated there in looking over the assessment roll; him and Mr. Van Gieson.

Q. Were you present at anything of the kind?

364 A. I was present, but did not participate; I relied upon their correctness.

Q. That was before you went to New York?

A. Yes, sir.

Q. When was it, in reference to the time you started for New York, that Mr. Pratt told you it was necessary to dispose of these bonds in order to avoid injury?

A. He did not say necessary.

Q. Well, that there was going to be an injunction?

PLAINTIFF'S COUNSEL. I renew my objection, unless they propose to connect us with knowledge of it.

The COURT. (To defendants' counsel.) Go on, sir.

Q. When, before you went to New York, on the morning of the 17th, had Mr. Pratt told you there was a probability of an injunction?

A. Well, I cannot say it was on the morning, at the time that we agreed when we met Mr. Pratt. I cannot say just when it was, but we had agreed to go on that day, as it appears the 17th. Previously he had given his consent for us to go there and issue these bonds.

Q. What purpose?

365 A. To issue the bonds; and I wished otherwise at the time.

Q. What did you wish otherwise?

A. To let them serve the injunction, and await the result.

Q. What did Mr. Pratt say to that?

A. That it would prove fatal to the railroad. The necessary delay would prove fatal.

Q. Was it at his request you went to New York?

A. Yes, sir.

Q. When did you sign the bonds?

A. I think I signed them the second day, as soon as I made this proposition for the appointment of trustees. Courtlandt Parker drew up. He got the idea of it at once. He drew it up, and it was satisfactory to the commissioners. We were prepared to go on and sign the bonds.

Q. What did Mr. Parker draw up?

A. Mr. Parker put it in form.

Q. (Showing witness Exhibit A for defendants.) What is that?

A. Well, we are all here. That is my name, and Robert Henning and Hiram B. Littell. That is the instrument.

366 Q. Mr. Parker reduced that to writing, and that was satisfactory?

A. Yes, sir.

Q. This paper, Mr. Harrison, speaks of the bonds as having been delivered to the trustees, Harrison, Homes, and Doremus, by the Montclair Railroad Company. Mr. Littell says the bonds were sold to some stranger, a gentleman who gave his check for them. How was that?

A. That was so.

Q. Just tell us about that.

A. This gentleman, I cannot call his name, he is brought in here; it was undoubtedly to go through the forms of a bona fide sale. After some little conversation relative to the value of the railroad, &c., he agreed to purchase the bonds, and this check was given for it for the amount, but before it was accepted I asked the question of the president, "This is not

certified. Will you accept of it a' par for the income bonds of the Montclair Railroad?"

Q. Had the income bonds of the Montclair Railroad been spoken of before that?

A. Yes; we knew what they were to be.

Q. You knew you were to get income bonds for the township bonds?

A. Yes, sir.

367 Q. And this matter of the check was done to observe the forms of law?

A. Certainly; we went through the forms of a bona fide sale.

Q. You did not finish the transaction on the night of the 17th, you say?

A. I think there was nothing done. My impression is there was nothing. We never gave, and could not until this instrument was agreed upon.

Q. This instrument bears date the 17th?

A. Well, when that was agreed upon, we were prepared to proceed to work.

Q. Did you sign the bonds on the 17th; any of them?

A. I cannot answer the question; my impression is they were not signed until the next day.

Q. How did Mr. Harrison and Mr. Holmes and Theron S. Doremus happen to be there?

A. I took them there.

Q. You took them?

A. I took Theron S. Doremus and Harrison there.

Q. What was the cause of their going there?

A. Doremus particularly was quite an accountant, and it was

368 after we had determined to accept of the bonds I wanted his presence there.

Q. Accept of what bonds?

A. That is, to issue the bonds, and I wanted him to look over them.

Q. You had determined to issue the bonds before he came?

A. We had determined before he came there. What time of the day he came I don't know.

Q. Then, what did you do with the bonds; you took a check and gave that to the railroad company and took the income bonds, did you not?

A. Well, that was all a form—so far as getting the check.

Q. What did you get for your bonds?

A. This check was paid, and it was all under one head—one transaction, the changing of the bonds. When we came away we had the income bonds.

Q. Your object was to make a bona fide sale of it as far as possible?

A. Yes, sir; that is what we did do.

Q. And complete the transaction?

A. And complete it.

Q. Who had the bonds printed?

A. Undoubtedly the railroad had the bonds ready for us.

369 Q. You did nothing but sign them?

A. Yes, sir.

Q. Signed them in the condition you found them?

A. Yes, sir.

Q. Do you know anything about the chan'ing of the date—the stamp and the date on the face of them?

A. No, sir; there was something said about the date, and I cannot answer it positively; my impression is that it was expected to have them issued earlier. That is my impression; I cannot say, sir, positively. The date was changed because they were issued later.

Q. The date seems to be stamped on in red ink. Do you remember about that?

A. No, sir; I do not.

Q. The bonds are printed to bear date on the first of January, 1870, and they are stamped on the 17th of March, 1870, you observe.

A. I recollect to have known at the time something about the date was earlier, and what it is I cannot answer. I know the difference in the date appears there, but I cannot give you any definite answer.

370 Q. You did not quit, however, that night of the 17th—did you go home that night?

A. No, sir.

Q. Where did you go?

A. I went to Jersey City.

Q. And staid all night in Jersey City?

A. Yes, sir.

Q. Why didn't you go home?

A. Well, to avoid the injunction.

Q. Where did Mr. Henning stay?

A. I don't know.

Q. Did you go home on the 18th?

A. Yes, sir.

Q. Well, was not the same reason to avoid the injunction as good on the 18th as it was on the 17th?

A. We had the bonds issued—the work was done.

Q. The job was completed, was it?

A. Yes, sir.

Q. On the 18th?

A. Yes, sir.

Q. And you went home after that without fear of the injunction?

A. Yes, sir.

Q. Did you ever see the bonds afterwards until they were produced here in court—the township bonds I mean?

A. I guess not; if they were seen at all they were handled by these trustees?

Q. I ask you if you ever saw them afterwards?

371 A. No, sir.

Q. Was there an injunction served on you afterwards?

A. Yes, sir.

Q. When?

A. My impression is it was the next day—I think it was.

Q. On the 19th, then?

A. I think so.

Q. You say you went home on the 18th?

A. Yes, sir.

Q. Where were you on the 19th—where was the injunction served on you?

A. At home.
Q. What time of the day?
A. I think it was in the after part of the day.
Q. Had you been to Newark before that?
A. I did not go there on the 19th.
Q. You were not there on the 19th?
A. No, sir; I do not recollect that I was.
Q. When did you hear that the injunction had been served upon Littell?
A. Well, I cannot answer positively.
Q. Did you know it before the injunction was served on yourself?
A. I think I did.
Q. Did you see Littell?
372 A. I did not.
Q. How did you hear it, then?
A. It was floating around the neighborhood. How I got it, I could not answer.
Q. Before the bonds were issued, were you aware that Mr. Crane, the former assessor, was unwilling to make the necessary affidavit that the amount of consents had been obtained?
(Plaintiff's counsel objected.)
Whereupon the court sustained said objection and refused to admit the question; to which ruling and decision of the court the defendants' counsel prayed an exception, and that said exception might be sealed; and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. After the injunction was served, did the commissioners answer the bill under which the injunction had been issued?
A. Well, I had forgotten all about it. I recollect very well about
373 the commissioners being called upon to go down to Parker's & Keasbey's office, what to do I cannot remember; it was something in connection with that suit.
Q. After the injunction was served?
A. A long time after.
Q. Who got you to go down?
A. I cannot tell exactly; we received a notice from Mr. Pratt, probably.
Q. Did you employ or pay any counsel in respect to that suit?
A. Not to my knowledge. I presume the commissioners never paid them.
Q. Were Parker & Keasbey counsel of the railroad company?
A. They were.
Q. Do you remember putting in any answer to that suit?
A. That is all I remember about it. I supposed this was the answer.
Q. Do you remember swearing to it before John Whitehead?
A. I know I went there for some purpose or other, and what took place, I suppose, was in connection with that suit?
Q. The statement you made at that time, was that correct?
(Plaintiff's counsel objected.)
374 Whereupon the court sustained said objection and refused to admit the question; to which ruling and decision of the court defend-

ants' counsel prayed an exception, and that said exception might be sealed; and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. What did you do that day with the township bonds, on the 18th, when you disposed of them; what actual disposition did you make of them; what did you do with them?

A. Well, we, as commissioners, you know, did not do anything with them; that is, it was understood——(Interrupted.)

Q. At the time you got the check, what did you do with the bonds; whom did you give them to?

A. Well, I have no knowledge of one; the whole transaction was one thing. A man comes here and purchases these bonds, and gives his check for $200,000, we take this same check and purchase the income bonds of the railroad company, these are something that all take charge of.

375 Q. You received those on the 18th?

A. On that day Mr. Henning brought them home.

Q. On that same day, the 18th?

A. Yes, sir.

Q. What control did you, gentlemen as commissioners, have *after* those township bonds after the 18th?

A. After the railroad company had progressed far enough to warrant, they made application to the trustees for a certain amount of the bonds.

Q. But I am speaking of the commissioners as commissioners?

A. Well, these trustees called on the commissioners, and if it met their approval they gave them.

Q. Then the commissioners did retain the control of the bonds after that?

A. Well, the trustees had the control, but we knew very well they would not do anything unless it met the approval of the commissioners.

Q. What legal control had the commissioners over the bonds after that?

A. I should not think they had any legal control after that time.

376 Q. It rested, then, with the trustees to say whether the bonds should go out after that?

A. Yes, sir.

PLAINTIFF'S COUNSEL. I object to that as a matter of legal construction.

Q. Well, that's all.

Not cross-examined.

Defendants' counsel offered in evidence the record of a suit in chancery, being a bill filed by William Crane, complainant, vs. Robert M. Henning, Hiram B. Littell, Jared E. Harrison, and the Montclair Railroad Company, filed on the 16th of March, 1870. An order for an injunction signed by A. O. Zabriskie, chancellor, on the 16th day of March, 1870, the proof of the service of the said injunction on the 19th of March, 1870, on Robert M. Henning, Hiram B. Littell, and Jared E. Harrison. The writ of injunction enjoining Robert M. Henning, Hiram B. Littell,

377 & Jared E. Harrison to desist and refrain from issuing on the name or credit of the township of Montclair any bonds under color of the act of the legislature, entitled "An act to authorize certain townships, towns, and cities to issue bonds and take the bonds of the Montclair Railroad Company," from exchanging or selling any of the

bonds, etc. (Counsel quoted from order the injunction bearing date on the 17th of March, 1870.) The affidavit on the injunction of Crane, that he did, on the 18th day of March, 1870, serve the injunction on Hiram B. Littell, by showing him the seal thereon, and explaining to him the contents thereof, and leaving him a copy.

Also offered in connection with this record the answer of Robert M. Henning, Hiram B. Littell, and Jared E. Harrison to the bill sworn to on the 6th day of June, 1870.

The affidavit of Robert M. Henning annexed thereto and the
378 answer of the Montclair Railroad Company to the bill. Also the record of an answer dated the 7th of June, 1870, directing the complainant to speed his cause, and a stipulation that the complainant's bill be dismissed without payment of costs by complainant, and an order of Chancellor Runyon, dated May 20th, 1873, dismissing the bill; also the subpœna issued in the suit, which record is certified to by Henry S. Littl'e, clerk of the court of chancery, under the seal of the court, with the certificate of Theodore Runyon, judge of the court, according to the act of Congress.

It is offered for the purpose of showing that at the time the bonds were issued there was a suit pending, founded upon illegality and fraud in the issuing of the bonds in connection with the fact that the imminency of the injunction was known by the railroad company, who were the real
379 buyers of the bonds, before the bonds were taken. We also show by the answer of the defendants that they sought to give the impression by the answer that the bonds were absolutely disposed of on the 18th without any reference to any agreement such as put in evidence here, and without disclosing any of the circumstances by which the trustees retained the control of the bonds after their apparent sale, the answer giving the impression that an absolute sale of the bonds was made before the injunction was served, and giving a false impression as to how the bonds were issued.

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit said offer, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

380 DEFENDANT'S COUNSEL. To avoid any misapprehension, and in order that our attempted defense may be valuable to us hereafter, we renew the offer involved in the question which has been overruled, to prove that the recital in the bonds that they were issued under the act of April 9th, 1868, is imperfect and insufficient, that act not being the only authority under which the bonds were issued—that is one claim—and that the act of April 16th, which is the township act, is necessary to maintain the validity of the bonds. Then we claim that the evidence is competent on the ground that the plaintiff is bound to inquire, and is therefore chargeable with notice of the facts, the act of April 9th, 1868, being, as we say, not sufficient of itself to justify the issue of the bonds for any township that was made out of the township of Bloomfield.

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit said offer, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

381

JNO. T. NIXON, *J.* [L. S.]

DEFENDANTS' COUNSEL. In the first place, we offer the income bonds which were taken in exchange for the township bonds by the commissioners, being twenty bonds of $10,000 each. (The same were marked in accordance with their numbers.) The following stipulation has been agreed upon by counsel, and will be read to the jury, and the stenographer can take it down.

PLAINTIFF'S COUNSEL. Let me say here, the facts is admitted. I admit the fact just as if they had proved it by witnesses, but subject to my objection as irrelevant testimony.

382

The COURT. Certainly.

DEFENDANT'S COUNSEL (Reading stipulation.) "It is admitted by the counsel of the parties that at the time the income bonds were taken by the commissioners similar bonds had been subscribed for at par by friends of the road. None had been offered and sold on the market, and they never had any future market value. The interest was paid for two years by the surrender of coupons on the town bonds, and then the road was sold upon a mortgage subsequently put on the road, and the township have all the bonds on hand." Of course that is subject to the objection of plaintiff's counsel as to the irrelevancy and inadmissibility of the testimony.

The COURT. Of course.

383

JOSEPH K. OAKES, a witness produced on behalf of the defendants, being sworn, testified as follows:

Direct examination by Mr. BLAKE:

Q. Where do you reside?

A. At Bloomfield.

Q. Where did you reside in the year 1867?

A. At Bloomfield.

Q. Were you assessor of that township for that year?

A. I was.

Q. (Handing witness a book.) Look at that book, please, and tell us what it is.

A. (Witness examined book.) The assessor's duplicate account of Bloomfield for the year 1867.

(Defendants' counsel offered in evidence the assessor's duplicate account of Bloomfield for the year 1867.)

(Plaintiff's counsel objected.)

The COURT. It is offered for what purpose?

384

DEFENDANTS' COUNSEL. For the purpose of showing that the consent of two-thirds of the real estate and landed property of that township were not obtained for the bonding of the township of Montclair, for that portion of Bloomfield included within the bounds of the subsequent township of Montclair.

Whereupon the court sustained said objection, and refused to admit the offer, to which ruling and decision of the court defendants' counsel prayed

an exception, and that said exception might be sealed, and it is sealed accordingly.

JOHN T. NIXON, *J.* [L. S.]

DEFENDANTS' COUNSEL. I think, perhaps, we were a little inaccurate in saying we wanted to contradict the consents, but we want to show the requisite amount was not filed; we want to show the requisite amount was not obtained.

385 There is another point of view in which we offer this, and that is, that we claim that the assessor's affidavit on these consents is not in conformity with the act, and we want to show that the act itself was not complied with in the point not covered by his affidavit.

Whereupon the court overruled said offer in that point of view, and refused to admit the same, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JOHN T. NIXON, *J.* [L. S.]

Have you at any time compared the consents for the bonding of Montclair Township with your assessor's duplicate for the year 1867?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to ad-
386 mit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JOHN T. NIXON, *J.* [L. S.]

DEFENDANTS' COUNSEL. We now offer to show by this witness that the consents which were filed in the office of *the office of* the county clerk in respect to the bonds issued for Montclair Township did not, in fact, represent two-thirds in value of the real estate and landed property of the township of Montclair, as appeared upon the assessment roll of the township of Bloomfield for the year 1867, by a deficiency of $96,620. We do not expect to be able to bring home to the present plaintiff any knowledge of that fact.

The COURT. If you do propose it you may ask the question; if you do not I overrule the offer.

387 DEFENDANTS' COUNSEL. We do not propose to follow this offer or the evidence if admitted by proving that the present plaintiff actually knew this fact, but we claim that enough appears in the case already to put him on inquiry and charge him with notice of what he would ascertain by notice.

The COURT. You have no additional evidence on this subject that is beyond what is already in the case?

DEFENDANTS' COUNSEL. No; no further evidence.

Whereupon the court overruled said offer, and refused to admit the testimony, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

388 DEFENDANTS' COUNSEL. We now offer to show by this witness

that no assessment roll was prepared for the purpose of issuing these bonds of the township of Montclair by extracting from the assessment roll of Bloomfield so much as relates to the taxable persons and property in the township of Montclair prepared by the assessor of Bloomfield, and that none such was made.

Whereupon the court overruled said offer, and refused to admit the testimony, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

That's all.

Not cross-examined.

389 ZENAS S. CRANE, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct examination by Mr. MCCARTER:

Q. Were you assessor of Montclair Township just previous to the election of Mr. Van Gieson?

A. I was assessor in the year 1868; I think he was elected in the spring——. (Interrupted.)

Q. Did you continue to be assessor until he was elected?

A. Yes, sir.

Q. Did you compare the consents which were filed for the purpose of bonding Montclair Township with the assessment roll or duplicate of that township for the year 1869 to ascertain whether two-thirds in value of the taxable real and landed property of the township of Montclair was represented by such consents?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to ad-
390 mit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

DEFENDANTS' COUNSEL. We offer to show to this witness that the consents represented less than two-thirds of the taxable real estate and landed property of the township for the year 1869 by a deficiency of $17,307.

(In reply to a question by the court.) We do not propose to connect the plaintiff with knowledge of this fact by any new evidence in the cause.

Whereupon the court overruled said offer, and refused to admit the testimony, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

391 Defendants' counsel offered the offer of this witness to identify for the purpose of putting in evidence his assessment roll of 1869, for the same object.

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection, and refused to admit said

testimony unless the plaintiff be connected with it by some new evidence not at present in the case, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Defendants' counsel offered in evidence the assessor's duplicate or assessment roll of Montclair for the year 1869.

(Plaintiff's counsel objected.)

392 Whereupon the court sustained said objection, and refused to admit said evidence, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Were you called upon by the township commissioners, and requested to make affidavit as to the fact of two-thirds having been obtained while you were acting as assessor?

(Plaintiff's counsel objected.)

Whereupon the court sustained said objection and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

393 DEFENDANTS' COUNSEL. We offer to show by this witness that while he continued to be assessor, he refused to make the affidavit that the requisite consents had been obtained in reply to applications on the part of the commissioners that he should make such affidavit.

Whereupon the court refused to admit said testimony as irrelevant unless the plaintiff be connected with knowledge of the fact, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. Were you aware of a suit being brought in the name of William Frame, to enjoin the issuing of these bonds?

(Plaintiff's counsel objected.)

394 DEFENDANTS' COUNSEL. The object of this is to show that a suit was brought by Mr. Frame as the representative of a large number of the tax-payers of the township of Montclair, who were associated with him in the bringing of the suit for the purpose of arresting the issuing of these bonds.

Whereupon the court sustained said objection, and refused to admit the question, to which ruling and decision of the court defendants' counsel prayed an exception, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Q. That's all.

395 Not cross-examined.

Defendants' counsel offered in evidence chapter 150 of the pamphlet laws of the State of New Jersey for the year 1869, being an act entitled "A supplement to the act entitled 'An act to incorporate the Montclair Railroad Company,'" approved March 16th, 1869, and found on page 407 of the pamphlet laws of New Jersey for that year.

Also offered an act entitled "An act to set off from the township of Pequannock, in the county of Passaic, a new township, to be called the township of Little Falls," approved April 2nd, 1868, and found on page 713 of the pamphlet laws of the State of New Jersey for the year 1868.

Rest all.

Testimony closed.

396 Thereupon the defendants' counsel requested the court to charge:

1. That, under the act of April 9, 1868, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," there was no authority in law for the appointment of commissioners to borrow money on the faith and credit of Montclair Township, or to issue bonds therefor; that the provisions of said act are not applicable to said township.

The COURT. That I decline to charge. I hold that the act authorizes them to issue bonds.

2. That so much of the act of April 15, 1868, creating the township of Montclair, as attempts to impose upon that township a liability to be bonded under the provisions of the act of April 9th, 1868, above referred to, is in conflict with the constitution of New Jersey, and is therefore void.

397 The COURT. That I decline to charge on the ground that it is immaterial in this case.

3. That, under the constitution of New Jersey, the legislature of that State could not lawfully vest the appointment of the commissioners for Montclair Township under the act of April 9, 1868, in a judge of the circuit court.

The COURT. That I decline to charge.

4. That the appointment of commissioners for the township of Montclair, under said act, if any such appointment was made, was without warrant of the law and was void.

The COURT. That I decline to charge.

5. The registry of the bonds was necessary to their validity, without which they could not be lawfully issued or disposed of by commissioners. If they were issued or disposed of without such registry, they were invalid, and such invalidity would not be cured by subsequent registry of

398 the bonds.

The COURT. I charge that, but I shall be obliged to tell the jury in this case that it seems to be the uncontradicted testimony of Mr. Littell that it was the understanding, at the time they were issued that they should be registered and that was a part of that transaction.

6. If, without validity when issued, the defect was not cured by their afterwards coming into the hands of a bona fide holder for value without knowledge that *that* they had been issued or disposed of without registry.

The COURT. I charge that also.

Whereupon plaintiff's counsel objected to such [* refusal to] charge, and prayed an exception thereto, and that the said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

399 7. The commissioners had no authority to delegate the performance of any duty imposed on them by that act, to others, nor to confer on any other person the right to determine when, or to whom, or on what conditions the bonds should be delivered or disposed of.

The COURT. If you mean by that request to say that they had no right to make the conditional arrangement with regard to the delivery of the bonds from to time, as the railroad was completed in the township of Montclair, I decline to charge it.

Whereupon defendants' counsel objected to the qualification which the court put on said request to charge, and prayed an exception thereto, and that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

400 8. The bonds to be valid, must have been sealed by the commissioners, and there is no evidence in the cause that they were so sealed.

The COURT. I decline to charge that.

9. That whatever evidence there is, if any, as to the bonds being sealed, must be submitted to the jury, and upon such evidence the jury must find whether or not the bonds were, in fact, sealed.

The COURT. That is not a question for the jury, but it is a question of law whether they were sealed or not. There is no doubt but what there was a scroll, and the scroll is all that the law requires on instruments for the payment of money.

10. The commissioners had no authority to issue the said bonds until the filing of the consent of the landholders and the affidavits required by the second section of the act, in the office of the clerk of the county, and it is a question for the jury to find as a fact, from the evidence in
401 the case, whether or not such proof has been made.

The COURT. The first part is correct, the second not correct, so far as what has been filed there affects the rights of the bona fide holder.

11. The registration attempted to be proved in this case was not lawful and sufficient according to the requirements of the act.

The COURT. I hold, on the contrary, that the registry proved in this case was all that the law required.

12. The act which authorizes the proceedings to bond this township required that the commissioners should dispose of the bonds for money, and not for less than par, and it is a question for the jury to determine whether the evidence shews that such disposition of the bonds was made.

The COURT. The first part of that is correct in regard to the issue of the bonds, but in the judgment of the court, the sale made by
402 the commissioners, and the taking in exchange of the income bonds of the railroad company complied with the requirements of the law.

13. That the railroad in aid of which these bonds were issued was not

* In pencil.

the object contemplated by the legislature in and by the bonding act of April 9, 1868, and therefore the bonds could not be lawfully issued in aid of such new enterprise.

The COURT. My reply to that is that the change made by the supplement to the act incorporating the railway company renders void the action of the township commissioners in regard to the issue of the bonds, and therefore I decline to so charge.

14. By the note introduced by the plaintiff, it appears that the bonds in suit were pledged by the railroad company to the New York and Oswego Midland Railway Company, and there is no evidence to show that the New York and Oswego Midland Railway Company had ever
403 parted with the title thus acquired, or that the pledgor of the bonds to E. D. Morgan & Co. had title to them when they were so pledged, and the note was not sufficient authorization for the sale of the bonds.

Mr. MCCARTER. I ask the court to charge that the pledge was to the New York and Oswego Midland Railway Company.

The COURT. I decline to charge that.

15. If E. D. Morgan & Co. had no title to the bonds, they could confer no title by their sale of them to the plaintiff.

The COURT. That is true, but the proof in this case is they had title.

16. That the affidavits of the assessors, required by section two of the act, is not in compliance therewith, inasmuch as it does not state or show in what year the person assigning the consent owned or represented at least two-thirds of the taxable real and landed property of the township,
404 and the consents upon which said affidavits are endorsed do not, nor does any of them, show the above fact, and therefore the defendants are not estopped from showing that the consents did not embrace two-thirds of the property of the township for the year 1867 required by the act, and that, in point of fact, less than such two-thirds for the year 1867 did consent, and also that the defendants are not estopped from showing that the consents did not embrace two-thirds of the property of the township in 1869, if such were required by the act, and that, in point of fact, less than such two-thirds for the year 1869 did consent.

The COURT. In regard to the first part of that, I have no hesitation in saying that it is the law of this court—and will continue to be until a higher court changes it—that the form of the affidavit is in accordance with the terms of the act. That was held by his honor Judge Strong in the case of The Cooper Union vs. The Township of Pompton, and I have
405 no right or disposition to rule otherwise. But in regard to the latter part, no matter how much these defects might have been shown, it does not affect the holder of these bonds if he is a bona fide holder without notice of such defects, and therefore the court declines to charge in accordance with the request in this cause.

17. That if the jury believe that the bonds were disposed of by the commissioners by fraudulent collusion with the railroad company in violation of the act, it was a fraud upon the law, and the bonds never having been legally issued they are invalid in the hands of the plaintiff.

The COURT. No matter what amount of fraud there may have been between the officers or agents of the town on the one hand and the railroad company on the other, in regard to the issuing of these bonds, unless

a knowledge of that fraud be brought to a bona fide purchaser of these bonds, he is not affected by it.

406 Mr. McCARTER. I believe that covers all the points we desire to present. We recognize the fairness and candor with which the court has dealt with us, and we desire to except to those instances in which the court has declined to charge as requested, and to the qualification which the court has made where the court has charged in part.

Whereupon defendants counsel prayed that said exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Mr. GUMMERE. I have nothing to say except that it is understood that I except to your honor's charge with reference to the matter of the registry.

407 The court thereupon charged the jury as follows:

GENTLEMEN OF THE JURY: It has already become manifest to you that the trial here has been chiefly to raise certain questions upon which the defendant desires to have the ruling of the court, in order hereafter to submit the same by writ of error to the ultimate decision of the Supreme Court. I have been anxious throughout the progress of the cause to find some questions of fact that I might impose the duty and responsibility of determining them upon you, and at the same time to afford to the parties the full benefit of the supervisory opinion of the Supreme Court upon every question of law. I do not understand that there are any questions of fact for the jury. In the absence of the petition and order appointing the commissioners, there might be an inquiry suggested whether the commissioners in fact were ever appointed. But with the large amount of testimony before you uncontradicted, and especially the testimony of Judge Depue, that he made the appointment for the township of

408 Montclair, and of Mr. Keasbey, that he carried the papers to the judge, and that the order came back signed by the judge, there seems hardly room for doubt upon that subject.

If in fact they were appointed commissioners, any irregularity in regard to the exercise of the power by the judge does not affect this plaintiff if he be a bona fide holder of the bonds without notice; and I am bound to say to you that the evidence seems to show without dispute that he is a bona fide holder. Evidence was offered by the defendant tending to prove—but I think without success—that the plaintiff went to the auction rooms and purchased the bonds for E. D. Morgan & Co., the party with whom they were pledged as collaterals for the payment of a note. But Mr. Terry, one of the partners, says that it was an absolute sale so far as they were concerned, made to the plaintiff for the sum of $36,000, and that they had no interest in them, directly or indirectly, since the sale. You will please have no difficulty with the fact that he bought them for less than their par value.

409 He is none the less a bona fide holder for value on that account. If the sale was a fair one without fraud, and he bid off the bonds for five dollars, the law authorizes him to demand of the obligors the principal and interest called for on the face of the bonds. A man does not cease to be a purchaser for a reasonable consideration because he does not happen to pay par for negotiable paper where it is sold in the open market without guaranty.

There was also a question raised about the registry of the bonds. The law undoubtedly required that they should be registered in order to their validity. The testimony of Mr. Littell, one of the commissioners, seems to be without contradiction that it was the understanding and arrangement when the railway company took the bonds in exchange for their income bonds, that they were to be registered, and that some one appointed for the purpose took them to the clerk's office for registry, and that they were registered before they were deposited in New York, subject to the control of the committee. You will recollect that they were to be retained by the United States Trust Company of New York, and to be
410 delivered to the railroad company or its agents only by the direction or order of a committee of the township when it was satisfied that the amount of money represented by the bonds asked for had been expended within the limits of the *of the* township of Montclair in the construction of the railroad. If this testimony is true, there is no question of fact left for the jury, and it will be your duty to find a verdict for the plaintiff, for the amount of principal due on the bonds and the accrued interest. Plaintiff's counsel has made a calculation which you may take. He makes the principal and interest amount to $40,862.60. You may find this sum subject to correction thereafter if it shall turn out that he has made a mistake in his calculations.

Mr. McCARTER. We call the attention of the court to one thing. We omitted to ask the court to charge the jury that if the jury found there was fraud in the issuing of these bonds, then the plaintiff, although a bona fide holder, can only recover the amount he paid for them with interest.
411 The COURT. I would charge that, but the difficulty is there has been no fraud shown.

Mr. McCARTER. We except to so much and such part of the charge of the court in this case as instructs the jury that the testimony of Mr. Littell, showed a sufficient arrangement for registry of the bonds; and also that part that tells the jury there was no evidence of fraud to make applicable the principle upon which I last asked the court to charge; and that the plaintiff could only recover the amount paid with interest.

And thereupon defendants' counsel prayed that said exception might be sealed, and it was sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

412 Defendants' counsel also excepted to that part of the charge which directed the jury that if the testimony of Mr. Littell was true, there was no question of fact left for the jury, and it was the duty of the jury to find a verdict for the plaintiff, for the amount of purchase due on the bonds and accrued interest, and prayed that the said exception might be sealed, and it was sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

TRENTON, N. J., *December 3rd*, 1878.

(Indorsed.) Circuit court of the United States, district of New Jersey, Charles Dana vs. The Inhabitants of the Township of Montclair, in the County of Essex. Bill of exceptions. McCarter & Keen, att'ys of def'ts. Filed December 3, 1878.

413 Supreme Court of the United States.

THE INHABITANTS OF THE TOWNSHIP OF Montclair, in the County of Essex, plaintiffs in error,
vs.
CHARLES DANA, DEFENDANT IN ERROR. } In debt.

On error to the circuit court of the United States for the district of New Jersey.

Of October term, in the year of our Lord one thousand eight hundred and seventy-nine.

Afterwards, to wit, on the second Monday in October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, come the said The Inhabitants of the Township of Montclair, in the County of Essex, by Thomas N. McCarter, their attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit:

414 First. That the declaration aforesaid and the matters therein contained are not sufficient in law for the said Charles Dana to have his said action against the said The Inhabitants of the Township of Montclair, in the County of Essex.

Second. There is also error in this, to wit, for that the said judge before whom the said cause was tried, at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, admitted parol evidence to be given of the contents of a supposed order appointing commissioners to issue bonds for the township of Montclair.

Third. There is also error in this, to wit, for that on the said trial the said judge admitted in evidence certain documents purporting to be consents of owners of real estate in the said township of Montclair; that the said township shall issue bonds and take in exchange therefor bonds of the Montclair Railway Company.

Fourth. There is also error in this, to wit, for that on said trial the said judge admitted in evidence the so-called bonds of the township of Montclair, described in the plaintiff's declaration.

415 Fifth. There is also error in this, to wit, for that on the said trial the said judge permitted a witness, viz, John Terry, to testify to the jury by parol as to the contents of the books of account of E. D. Morgan & Co., and denied the motion of defendants to overrule such parol evidence.

Sixth. There is also error in this, to wit, for that the said judge on the said trial, admitted in evidence certified copies of the alleged consent of certain of the owners of real estate in said township of Montclair, that the said township should issue bonds, and take in exchange therefor the bonds of the Montclair Railway Company.

Seventh. There is also error in this, to wit, for that the said judge, on the said trial, overruled a question which defendants' counsel put to a wit-

ness, Arzy Van Gieson, as follows: "Before making the affidavit on this Exhibit No. 15, what steps did you take to inform yourself as to whether the consents contained in this document were signed by the requisite number and amount of taxable property and land owners?" and refused to permit the question to be answered by said witness.

Eighth. There is also error in this, to wit, for that on said trial the said judge overruled a question which defendants' counsel put to
416 the witness Arzy Van Gieson, as follows: "Did you, before making these affidavits, cause to be prepared an assessment roll by extracting from the assessment roll of the township of Bloomfield for 1867, all that related to any assessment of persons or property in the territory embraced in the township of Montclair, before you made these affidavits?" and refused to permit the said question to be answered by said witness.

Ninth. There is also error in this, to wit, for that on the said trial the said judge overruled a question which defendants' counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Did the commissioners, Messrs. Hening, Harrison, and Littell, prepare and submit to you any such assessment roll?" and refused to permit the said question to be answered by said witness.

Tenth. There is also error in this, to wit, for that on the said trial the said judge overruled a question which defendants' counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Did you make any inquiry to ascertain whether the persons whose names were signed to the consents on which you endorsed your affidavits, were owners of, or
417 represented as agent or president, the property in respect to which they signed?" and refused to permit the said question to be answered by said witness.

Eleventh. There is also error in this, to wit, for that on the said trial the said judge overruled a question which defendants' counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Did you know or had you been informed at the time you made your affidavits that your predecessor in office had refused to make the affidavits to bond the town?" and refused to permit the said question to be answered by said witness.

Twelfth. There is also error in this, to wit, for that on the said trial the said judge overruled a question which defendants' counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Was the business of making the affidavits endorsed on these consents transacted by you under circumstances of haste or unusual expedition?" and refused to permit the said question to be answered by said witness.

Thirteenth. There is also error in this, to wit, for that on the said trial the said judge overruled a question which defendants' counsel
418 put to the said witness, Arzy Van Gieson, as follows, viz: "Were you informed at the time of making the affidavits or before they were made that an injunction was apprehended to prevent the issuing of the *issuing of the* bonds referred to in the consent?" and refused to permit the said question to be answered by the said witness.

Fourteenth. There is also error in this, to wit, for that on said trial the said judge overruled a question which defendants' counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Were you at or before the time of making your affidavit informed that some owners whose names appeared as signers on these consents had withdrawn their consents or re-

quested their names to be withdrawn from these consents?" and refused to permit the said question to be answered by said witness.

Fifteenth. There is also error in this, to wit, for that on said trial the said judge overruled a question which defendants' counsel put to the said witness, Arzy Van Gieson as follows, viz: "Did you, before making the affidavits, or at the time of making them, have any conference with Mr. Crane, your predecessor, on this subject?" and refused to permit the said question to be answered by said witness.

419 Sixteenth. There is also error in this, to wit, for that on said trial the said judge overruled another question which defendant's counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Did you have any such conference at the time of or before making the affidavits with Joseph K. Oakes, the assessor of the township of Bloomfield for the year 1857?" and refused to permit the said question to be answered by said witness.

Seventeenth. There is also error in this, to wit, for that on said trial the said judge overruled another question which defendant's counsel put to the said witness, Arzy Van Gieson, as follows, viz: "Mr. Van Gieson, the records of the commissioners for bonding Montclair Township, *of* a meeting on March 16, 1870, have been put in evidence in this cause, that the commissioners satisfied themselves by the certificate of the assessor that the requisite amount of property owners had signed in favor of bonding. Did you furnish the commissioners, on the 16th of March, 1870, a certificate that the requisite amount of property owners had signed in favor of bonding?" and refused to permit said question to be answered by said witness.

420 Eighteenth. There is also error in this, to wit, for that on the said trial the said judge overruled a question which defendants' counsel put to a witness, Jared E. Harrison, as follows, viz: "It appears by the record kept by Mr. Littell, as secretary of the commission, that on the 16th of March, 1870, the commissioners satisfied themselves, by the certificate of Mr. Van Gieson, that the requisite amount had signed the consents. State, if you please, what the commissioners took from Mr. Van Gieson to satisfy them about that?" and refused to permit the said question to be answered by the said witness.

Nineteenth. There is also error in this, to wit, for that on said trial the said judge overruled a question which defendants' counsel put to the said witness, Jared E. Harrison, as follows, viz: "Did the commissioners before issuing these bonds cause to be prepared an assessment roll for the township of Montclair by extracting from any assessment roll for the year 1867 of the township of Bloomfield all that related to any assessment of persons and property in the territory embraced in the township of Montclair?" and refused to permit the said question to be answered by said witness.

Twentieth. There is also error in this, to wit, for that on said trial the said judge overruled another question which the defendants' counsel put to the said witness, Jared E. Harrison, as follows, viz: "Did they prepare such an assessment roll for the year 1867 of persons and property included in the territory of the township of Montclair?" and refused to permit said question to be answered by said witness.

421

Twenty-first. There is also error in this, to wit, for that on said trial the said judge overruled a question which defendants' counsel put to the said

witness, Jared E. Harrison, as follows, viz: "Did the commissioners, in determining whether the requisite amount of land owners had signed the consents, make use of any such assessment roll of Bloomfield for either 1867 or 1869?" and refused to permit the said question to be answered by said witness.

Twenty-second. There is also error in this, to wit, for that on said trial the said judge overruled a question which defendants' counsel put to the said witness, Jared E. Harrison, as follows, to wit: "Did the commissioners or the assessor, before the issuing of these bonds, make use of any assessment roll prepared from the assessment roll of the township of Montclair for the year 1869, or from any previous assessment roll made from
422 the township of Montclair?" and refused to permit the said question to be answered by said witness.

Twenty-third. There is also error in this, to wit, for that on said trial the said judge overruled a question which the defendants' counsel put to the said witness, Jared E. Harrison, as follows, viz: "Before the bonds were issued, were you aware that Mr. Crane, the former assessor, was unwilling to make the necessary affidavit that the amount of consents had been obtained?" and refused to permit the said question to be answered by said witness.

Twenty-fourth. There is also error in this, to wit, for that the said judge on the said trial refused to permit the defendants' counsel to examine the said witness, Jared E. Harrison, as to the correctness of a previous statement made by said witness concerning the issue of the bonds declared on in this cause in the answer put in by him to a bill in chancery of New Jersey, the object of which was to enjoin and prevent the issue of said bonds.

Twenty-fifth. There is also error in this, to wit, for that on the said trial the said judge refused to admit in evidence in said cause the record
423 and proceedings in a certain suit in chancery of New Jersey, wherein William Frame was complainant and Robert M. Hening, Jared E. Harrison, and Hiram B. Littell and The Montclair Railway Company were defendants, and overruled the offer of defendants' counsel to read the same in evidence.

Twenty-sixth. There is also error in this, to wit, for that the said judge on the said trial refused to admit in evidence the assessor's duplicate or assessment roll for the year 1867, for that portion of the township of Bloomfield included within the bounds of the township of Montclair, and overruled the offer of defendants' counsel to read the same in evidence in said cause.

Twenty-seven. There is also error in this, to wit, for that the said judge on the said trial refused to permit the defendants to prove and give in evidence the fact that the consents which were filed in the office of the county clerk of Essex County in respect to the bonds issued for Montclair Township, did not in fact represent two-thirds in value of the real estate and landed property of the township of Montclair for the year 1867, by a deficiency of $96,620.

Twenty-eighth. There is also error in this, to wit, for that the
424 said judge on the said trial refused to permit the defendants to prove or give in evidence the fact that no assessment roll was prepared for the purpose of issuing the said bonds for the township of Montclair by extracting from the assessment roll of Bloomfield Township so

much as related to the taxable persons and property in the township of Montclair.

Twenty-ninth. There is also error in this, to wit, for that the said judge on said trial refused to permit the defendants to prove or give in evidence the fact that the said consents signed by the owners of real estate represented less than two-thirds of the taxable real estate and landed property of said township for the year 1869, by a deficiency of $17,307.

Thirtieth. There is also error in this, to wit, for that the said judge on said trial refused to permit the defendants to prove or give in evidence the fact that Zenas S. Crane, while he was assessor of Montclair Township, refused to make affidavit that the requisite amount had been obtained in reply to applications on the part of the commissioners that he should make such affidavit.

Thirty-first. There is also error in this, to wit, for that the said judge on said trial refused to permit the defendants to prove or give in evidence
425 that the suit in the court of chancery of New Jersey brought by William Frame, and referred to in the 25th assignment of errors, was brought by said Frame as the representative of a large number of the tax-payers of the township of Montclair, who were associated with the said William Frame in the bringing of the suit for the purpose of arresting the issuing of the bonds in question in this cause.

Thirty-second. There is also error in this, to wit, for that the said judge on the said trial, although requested so to do by defendants' counsel, refused to charge the jury, "That under the act of April 9, 1868, entitled 'An act to authorize certain townships, towns, and cities to issue bonds and to take the bonds of the Montclair Railway Company,' there was no authority in law for the appointment of commissioners to borrow money on the faith and credit of Montclair Township, or to issue bonds therefor; that the provisions of said act are not applicable to said township."

Thirty-third. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel,
426 refused to charge the jury, "That so much of the act of April 15, 1868, creating the township of Montclair, as attempts to impose upon that township a liability to be bonded under the provisions of the act of April 9, 1868, above referred to, is in conflict with the constitution of New Jersey, and is therefore void."

Thirty-fourth. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury, "That under the constitution of New Jersey the legislature of that State could not lawfully vest the appointment of the commissioners for Montclair Township, under the act of April 9, 1868, in a judge of the circuit court."

Thirty-fifth. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury, "That the appointment of commissioners for the township of Montclair under said act, if any such appointment was made, was without warrant of law, and was void."

Thirty-sixth. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury, "That the commissioners had no authority
427 to delegate the performance of any duty imposed on them by the

act to others, nor to confer on any other person the right to determine when, or to whom, or on what conditions he bonds should be delivered or disposed of."

Thirty-seventh. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury that, "The bonds to be valid must have been sealed by the commissioners, and there is no evidence in the cause that they were so sealed."

Thirty-eighth. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury that, "The registration attempted to be proved in this case was not lawful and sufficient according to the requirements of the act."

Thirty-ninth. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury, "That the railroad in aid of which these bonds were issued
428 was not the object contemplated by the legislature in and by the bonding act of April 9, 1868, and therefore the bonds could not be lawfully issued in aid of such new enterprise."

Fortieth. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury, "That the affidavits of the assessors, required by section two of the act, is not in compliance therewith, inasmuch as it does not state or show in what year the person signing the consent owned or represented at least two-thirds of the taxable real and landed property of the township, and the consents upon which said affidavits are endorsed do not, nor do any of them show the above fact, and therefore the defendants are not estopped from showing that the consents did not embrace two-thirds of the property of the township for the year 1867, required by the act, and that in point of fact less than such two-thirds for the year 1867 did consent, and also that the defendants are not estopped from showing that the consents did not embrace two-thirds of the property of the township in 1869, if such were required by the act, and that, in point of fact, less than such two-thirds for the year 1869 did consent."

429 Forty-first. There is also error in this, to wit, for that the said judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury "That whatever evidence there is, if any, as to the bonds being sealed, must be submitted to the jury, and that on such evidence the jury must find whether or not the bonds were in fact sealed, but on the contrary charged the jury that that was not a question for the jury, but it was a question of law whether they were sealed or not; that there was no doubt but what there was a scroll, and the scroll is all that the law requires on instruments for the payment of money.

Forty-second. There is also error in this, to wit, for that the said judge on said trial, although requested to so do by defendants' counsel, refused to charge the jury, that by the note introduced by the plaintiff, it appears that the bonds in suit were pledged by the railway company to the New York and Oswego Midland Railway Company, and there is no evidence to show that the New York and Oswego Midland Railway Company had ever parted with the title thus acquired, or that the pledges of the bonds to E.
D. Morgan & Co. had title to them when they were so pledged,
430 and the note was not sufficient authorization for the sale of the

bonds, and that the pledge was to the New York and Oswego Midland Railway Company.

Forty-third. There is also error in this, to wit, for that the said judge on said trial, charged the jury that the proof was that E. D. Morgan & Co. had title to the bonds.

Forty-fourth. There is also error in this, to wit, for that the said judge on said trial, not only refused to charge the jury as requested by defendants' counsel, that if the jury believe that the bonds were disposed of by the commissioners by fraudulent collusion with the railway company, in violation of the act, it was a fraud upon the law, and the bonds never having been legally issued they are invalid in the hands of the plaintiff, but on the contrary charged the jury that no matter what amount of fraud there may have been between the officers or agents of the town on the one hand, and the railway company on the other, in regard to the issuing of these bonds, unless a knowledge of that fraud be brought to a bona fide purchaser he is not affected by it.

431 Forty-fifth. There is also error in this, to wit, for that the said judge on said trial, in reply to a request of defendants' counsel to charge the jury that if the jury find there was fraud in the issuing of these bonds, then the plaintiff, although a bona fide holder, can only recover the amount he paid for them, with interest, charged the jury as follows, viz: "I would charge that, but the difficulty is there has been no fraud shown."

Forty-sixth. There is also error in this, to wit, for that the said judge on said trial charged the jury that the testimony of Mr. Littell showed a sufficient arrangement for registry of the bonds.

Forty-seventh. There is also error in this, to wit, for that the said judge on said trial charged the jury that if the testimony of Mr. Littell was true, there was no question of fraud left for the jury, and it was the duty of the jury to find a verdict for the amount of principal due on the bonds and accrued interest.

Forty-eighth. There is also error in this, to wit, for that the said
432 circuit court rendered a judgment in said action in favor of the plaintiff, and against the defendants which, by the law of the land, and the evidence in the cause, should have been rendered in favor of the defendants.

And the said The Inhabitants of the Township of Montclair, in the county of Essex, pray that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

THOMAS N. McCARTER,
Att'y of Pl'ff in Error, Newark, N. J.

(Indorsed:) U. S. Supreme Court. The Inhabitants of the Township of Montclair, in the county of Essex, pl't'ff's in error, vs. Charles Dana, def't in error. In debt. Assignment of error. Thomas N. McCarter, att'y pl'ff. Filed September 6, 1879. S. D. Oliphant, clerk.

433 United States circuit court, district of New Jersey.

I, S. D. Oliphant, clerk of the United States circuit court for the district of New Jersey, do hereby certify the foregoing written and printed pages to be a true transcript of the record and proceedings in the case of

Charles Dana against The Inhabitants of the Township of Montclair, in the county of Essex, as fully as the same remain on file and of record in my office.

In witness whereof I hereunto set my name and affix the seal of said court, at office, in the city of Trenton, in said district, this thirtieth day of October, in the year of our Lord eighteen hundred and seventy-nine.

[SEAL.] S. D. OLIPHANT,
Clerk, &c.

(Indorsement on cover:) No. 146. The Inhabitants of the Township of Montclair, in the county of Essex, plaintiffs in error, vs. Charles Dana. New Jersey C. C. U. S. Filed 12th November, 1879.

OFFICE SUPREME COURT U. S.
FILED
DEC 18 1882
JAMES H. McKENNEY, Clerk.

United States Supreme Court.

OCTOBER TERM, 1882.

THE INHABITANTS OF THE TOWNSHIP OF MONTCLAIR, IN THE COUNTY OF ESSEX,
Plaintiffs in Error,

vs.

CHARLES DANA.

No. 146.

In Error to the Circuit Court of the United States, for the District of New Jersey.

BRIEF FOR PLAINTIFFS IN ERROR.

NEWARK, N. J.:
WARD & TICHENOR, LAW CASE PRINTERS, 832 & 834 BROAD ST.
1882.

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United States Supreme Court.

THE INHABITANTS OF THE TOWNSHIP OF MONTCLAIR, IN THE COUNTY OF ESSEX,
Plaintiffs in Error,
vs.
CHARLES DANA,
Defendant in Error.

In Error to the Circuit Court of the United States, for the District of New Jersey.

BRIEF FOR PLAINTIFFS IN ERROR.

This is a writ of error brought to remove to this Court the judgment of the Circuit Court of the United States, for the District of New Jersey, rendered in seven suits between the same parties, which were consolidated into one cause by the Court below, as appears by the order found on page 93 of the record.

The declarations in the several suits were founded on certain alleged bonds of the township of Montclair, in the county of Essex and State of New Jersey, and interest coupons thereto annexed, declaring on them as sealed instruments, and adding in each declaration a count for interest. The declaration in suit No. 1, begins on page 2 of the record; the count for interest is on page 10.

The pleas are *non est factum*, as to the counts on the bonds, and *nil debt*, as to the count for interest. (Record, pp. 11 and 12.)

The other suits are in all respects similar to the first, except that they are founded on different bonds and coupons. The pleas in all the other cases are the same.

Judgment was rendered in the consolidated cause for plaintiff, for

Debt	$35,022 60
Damages	5,840 00
Costs	726 05
Total	$41,588 65

(See record, page 94.)

The bonds thus recovered on were issued under color of an act of the legislature of New Jersey, entitled "An act to authorize certain townships, towns, and cities to issue bonds, and to take the bonds of the Montclair Railway Company," approved April 9th, 1868, published in the Pamphlet Session Laws of the State of New Jersey, for the year 1868, on page 889. This act is copied at length in the record, on pages 100 to 104.

In 1874, a supplement was passed to said act, which was approved March 27th, and is found in the Pamphlet Laws of New Jersey for 1874, page 739, and copied in this record, on page 104.

The Montclair Railway Company was incorporated by an act of the legislature of New Jersey, approved March 18th, 1867, found in the Pamphlet Laws of New Jersey for that year, on page 301, and copied in this record, pp. 95 to 97.

The township of Montclair was incorporated by the legislature of New Jersey, by an act approved April 15, 1868, (six days after the approval of the bonding act,) found in the Pamphlet Laws of New Jersey, for 1868, page 998. This act is copied in the record, on page 97, except its title, which in this record is said to be "An act to incorporate the township of Montclair," while the true title is "An act to set off from the township of Bloomfield, in the county of Essex, a new township, to be called the township of Montclair." (The page of the New Jersey session laws where this act is found, is also erroneously stated in the record to be page 199.) The

new township thus set off was composed entirely of territory formerly of the township of Bloomfield.

The acts above referred to comprise all the legislation which bears on the questions involved in this cause, except an act to create the township of Little Falls, and a supplement to the act incorporating the Montclair Railway Company, hereafter referred to.

The assignment of errors returned with the writ of error in this case is found on pages 213 to 219, inclusive, of the record, and those to which the attention of the Court will be specially directed, will be hereafter stated.

The bonds in question were issued by the commissioners assuming to act for Montclair township, on or about March 18th, 1870.

Testimony of Jared E. Harrison, page 200.

I.

The first ground on which plaintiffs in error rely for the reversal of this judgment, is that there was no lawful authority for the issuing of bonds of the township of Montclair, in aid of the Montclair Railway.

This question is raised on the following assignments of error, found on page 217 of the record:

Thirty-second. There is also error in this, to wit, for that the said Judge on the said trial, although requested so to do by defendant's counsel, refused to charge the jury "that under the act of April 9th, 1868, entitled 'An act to authorize certain townships, towns and cities to issue bonds, and to take the bonds of the Montclair Railway Company,' there was no authority in law for the appointment of commissioners to borrow money on the faith and credit of Montclair township, or to issue bonds therefor; that the provisions of said act are not applicable to said township."

Thirty-third. There is also error in this, to wit, for that the said Judge on said trial, although requested so

to do by defendant's counsel, refused to charge the jury "that so much of the act of April 15th, 1868, creating the township of Montclair, as attempts to impose upon that township a liability to be bonded under the provisions of the act of April 9th, 1868, above referred to, is in conflict with the constitution of New Jersey, and is therefore void."

Thirty-fifth. There is also error in this, to wit, for that the said Judge on said trial, although requested so to do by defendant's counsel, refused to charge the jury, "that the appointment of commissioners for the township of Montclair under said act, if any such appointment was made, was without warrant of law, and was void."

The requests of defendant's counsel to the Court to charge the jury on these points, the refusal so to charge, and the exceptions on which the above three assignments of error are based, are found on page 208 of the record.

It is scarcely necessary at this day and in this Court to cite authorities to the point, that without legislative authority, bonds such as these are invalid even in the minds of all innocent and (in other respects) *bona fide* holder.

A municipal corporation cannot issue bonds in aid of extraneous objects without legislative authority, of which all persons dealing in such bonds must take notice at their peril.

Town of S. Ottawa vs. *Perkins*, 4 Otto, 262, and cases there cited.
Marsh vs. *Fulton Co.*, 10 Wall., 676.
Pendleton vs. *Amy*, 13 Wall., 304.
St. Joseph Township vs. *Rogers*, 16 Wall., 659.

In *Township of East Oakland* vs. *Skinner*, 94 U. S., 258, this Court said, "We have held that there can be no *bona fide* holding when the statute did not in law author-

ize the issue of the bonds. The objection in such cases goes to the point of power."

County of Daviess vs. *Huiderkoper*, 98 U. S., 98.
Anthony vs. *County of Jasper*, 101 U. S., 693.
Wells vs. *Supervisors*, 102 U. S., 625.
Dillon on Municipal Corporations, §426, p 413.
Daniell on Negotiable Instruments, 3d ed., §1538.

We are brought then to the question, whether there existed competent legislative authority to justify the issue of the bonds.

A. Can it be found in the bonding act?

The first section of the Bonding Act of 1868 is as follows: (Record, p. 100.) "Be it enacted by the Senate and General Assembly of the State of New Jersey, That on the application in writing of twelve or more freeholders, residents of any township, town or city along the routes of the Montclair Railway Company, or at the termini thereof, (*except the township of Bloomfield in the County of Essex, which township is hereby excepted from the operation of* ALL THE PROVISIONS *of* this act,) it shall be the duty of the Judge of the Circuit Court of the county wherein such freeholders reside, within ten days after receiving such application, to appoint under his hand and seal, not more than three freeholders, residents of such township, town or city, to be commissioners thereof, to carry into effect the purposes and provisions of this act; said commissioners shall hold their offices respectively for the term of five years and until others shall have been appointed."

The second section limits the amount to be borrowed to twenty per centum of the real estate of the townships, to be ascertained by the assessment rolls thereof for the year 1867, and requires the previous consent in writing, of persons owning at least two-thirds of the real estate of the township borne on the last assessment roll thereof, at the valuation thereon appearing.

By the first section it is clear that the township of Bloomfield "is excepted from the operation *of all the provisions*" of the act.

It is claimed, however, that under the operation of the fourteenth section of the act (page 104 of the record), Montclair, which is a new township, is made liable to the provisions of the act. That section is as follows:

"And be it enacted that in case any new township, "town or city, shall have been created, or the boundaries "of any township, town or city, shall have been enlarged "on the routes of said railway, or at the termini there- "of, so that there is no assessment roll for the year "eighteen hundred and sixty-seven, for such township, "town or city so created, or enlarged, the said commision- "ers for such new or enlarged township, town or city, "shall cause to be prepared an assessment roll for the "purposes of this act, by extracting from any assessment "roll or rolls of persons or property in the territory "embraced in the said new township, town or city so "created, or in said enlargement."

It may well be doubted whether the words "shall have been," as used in the section, are prospective, or whether they will not be construed to relate only to past transactions.

In *Jackson* vs. *Chapman*, 3 Cow., 390,

The statute read, "where any person or persons shall have settled" upon certain lands, and the Court held that the language had a retrospective effect only, and only related to persons who had settled on the lands when the law was passed.

This ruling was followed in *Jackson* vs. *Caywood*, 7 Wend., 246.

This view is fortified by the fact that the law went into immediate operation, and the language of the 14th section is *in presenti*, not *in futuro*.

"In case any new township * * * * shall have been created * * * * so that there is no assessment roll for the year 1867, for such township * * * so created."

If the draughtsman had had a different purpose, he would have written "shall have been, or shall be ~~en-acted,~~ created" and "there is *or shall be* no assessment roll for the year 1867; and territory embraced *or to be embraced*—and township so created, *or to be created.*"

The 14th section undoubtedly had reference to the township of Little Falls; the act to create which was before the legislature when the bonding act was introduced, and was actually passed on the second of April, 1868, some days before the bonding act became a law. (Record, page 208.) The difference between Little Falls and Montclair is this, one was created *prior* to the passage of the bonding act, and the other was created *subsequently*, and from territory specially excepted from its operation.

We do not, however, rest our construction of the 14th section on so narrow ground as that; but assuming that it was prospective in its operation, and applied to townships to be created in the future, we contend that it does not authorize the bonding of a township to be created from Bloomfield, which was expressly excepted from all the provisions of the act.

This is purely a question of legislative intent, to ascertain which the whole must be construed together, and so construed as, if possible, to give effect to every part of it.

It will be observed that the act is territorial in its operation. By the fourth section it is provided that the taxes necessary to secure the payment of these bonds are to be assessed only on the real property of the township.

When, therefore, Bloomfield was excepted from the operation of all the provisions of the act, it was a clear

legislative declaration that no real estate within the territorial limits of that township should be liable to be taxed for the purpose in question.

Some reason must have existed to induce the legislature to declare this township exempt from the operation of the act. Can any be suggested founded on the idea that such land would only remain exempt while it was in a territory called by the name of Bloomfield?

To illustrate, suppose instead of setting off a part of Bloomfield into the new township of Montclair, the legislature had made a slight change in the boundaries of Bloomfield, so as to enlarge its area. It would then have come within the language of the 14th section, "if the boundaries of any township, town or city shall have been enlarged." Can it be fairly contended that this circumstance would have operated to repeal the previous exception of Bloomfield?

Or further, if either with or without the enlargement of its boundaries, the name of the whole township had been changed to Montclair, would that have repealed the exception? Clearly not.

Such a construction would make the legislative exception to depend on the corporate name bestowed on the territory, which would be absurd.

And so, if the township were altered into a city or town corporate. Change of name or function does not alter "vested debts and rights."

Would it not remain, if the township were divided into two or more new townships?

Mount Pleasant vs. *Beckwith*, 100 U. S., 514.

And if it continue for the *whole* territory, when thus divided, why not for a *part*, when set off as a new township?

In New Jersey, the settlement of a pauper follows the the land, in the division of a township. (10 N. J. L., 59; 32 N. J. L., 66.)

The constitution of the State declares that the commission of a justice of the peace shall become vacant, upon his ceasing to reside in the township for which he was elected. But, it has been held that this does not apply to a justice who is set off in a new township, which is part of the one for which he was elected. (31 N. J. L., 42.)

Trustees of Academy vs. *Erie*, 31 Pa. St., 515.

STRONG, *J.*: "There is no doctrine better settled, than that a change in the form of government of a community does not *ipso facto* abrogate existing law, either written or unwritten. . . . The act of Assembly converting a borough into a city did not, therefore, of itself and in the absence of express provisions to that effect, either repeal the former acts of Assembly relative to the borough, or annul existing ordinances."

If, then, a change in the name of the whole territory of Bloomfield would not operate to repeal the exemption much less would such an effect follow a change in the name of only a part.

No reason can be suggested why the legislature after carefully excepting the whole of Bloomfield from all the provisions of the act, (which of course included as well the provisions of the 14th section,) should immediately in the same act, declare that a part of that territory should become subject to ~~an~~ the act if it was created into a new township and called by a new name

The object of the 14th section was, manifestly, only to provide for a mode of executing the act in cases where a change in the constitution of any township *subject to the act* should have rendered the mode previously provided ineffectual. It cannot fairly be construed to enlarge the scope of the act so as to include townships not previously made liable.

Any other construction will render the 14th section repugnant to the exception contained in the first section. Such an interpretation will violate well settled rules of construction of statutes.

Therefore, if an act is susceptible of two constructions, one which will make the whole statute effectual, and the other will make two parts repugnant, the Court will so construe the act as to give effect to the whole.

It is also a well established rule of interpretation that general words shall not be allowed to overturn those which are particular, nor to repeal a positive prior exception.

We refer to the following authorities :

Sedgwick on Stat. and Const. Law, 97.

"It is laid down as a rule, that a general statute without negative words, will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent.

"The reason and philosophy of the rule is, that where the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions; unless it is absolutely necessary to give the latter act such a construction, in order that its words may have any meaning at all."

Comyn's Dig., (Parl R. 9, a.) "A later statute, general and affirmative, does not abrogate a former which is particular."

Potter's Dwarris on Statutes, 113 n; 154–160.

1 *Dill. on Munic. Corp.*, § 54.

"If both the general and special acts can stand, they will be construed accordingly. If one must give way it will depend upon the supposed intention of the lawmakers, to be collected from the entire course of legislation, whether the charter is suspended by the general statute, or whether the special charter provisions apply to the municipality in exclusion of the general enactments."

William vs. *Pritchard*, 3 Durn. and East., 2, (1790).

An act of parliament had authorized individuals to inclose and embank portions of the soil under the river Thames, and had declared that such land should be "free from all taxes and assessments whatsoever." The Land Tax Act subsequently passed, by general words embraced all the land in the kingdom, and the King's Bench held that it was illegal to tax such reclaimed land.

The State vs. *Morristown*, 4 Vroom, 61.

The Court held that the general law of 1851, in relation to sidewalks, did not apply to cities and towns which had special chartered privileges upon the subject; that "general legislation must give way to the special legislation on the same subject." The Court further said: "It is a question of intention."

The State (M. & E. R. R. Co., pros.) vs *Commissioners of R. R. Taxation*, 8 Vroom, 230.

DEPUE, *J.*: "Repeals by implication are not favored. But the question is always one of legislative intent, and the intent to abrogate the particular enactment in an earlier statute by a general enactment in a later statute, is sufficiently manisfested where the provisions of the two enactments are so inconsistent that they cannot stand together. The language of this section, that all taxation upon all railroad companies occupying and using railroads in this State, whether as lessees or otherwise, shall hereafter be made as follows, is so general and comprehensive that the legislative intent is left in no doubt."

In the same case, when carried to the Court of Errors and Appeals, (9 Vroom, 475,) it was held, "A general repealer in a general tax law cannot disturb the provisions of a special charter, because they are wholly different, they are not inconsistent; they may both stand independent of each other. They become inconsistent when the general law, by clear expression, is made to embrace and is applied to the particular corporation, and its inconsistent provisions are then brought within the

reach of a general repealer. There is nothing in the cases in 1 Vroom, 113 and 369, which is not in harmony with this doctrine. If the prior clauses of a general law apply in express terms to a special corporation, a general repealer would necessarily repeal inconsistent provisions in the special charter. But if there is an absence of such express prior references there must be a special repealing clause to make a general law applicable to such particular corporation."

Ottawa vs. *LaSalle Co.*, 11 Ills., 654, (1851).

The town of Ottawa had, by its charter, power to license and regulate groceries, and to retain the license fees. A subsequent general law provided that such fees should be paid to the county. The Court held, "The earliest statute continues in force, unless the two are clearly inconsistent with and repugnant to each other; or unless, in the latest statute, some express notice is taken of the former, plainly indicating an intention to repeal it."

St. Martin vs. *New Orleans*, 14 La. Ann., 113.

Two acts in relation to the government of New Orleans were passed on the same day. One of them fixed the salary of the officer known as the Register of Voters at a definite sum; while the other allowed the Common Council to determine the compensation of all the city officials. "The minute and particular provisions of the legislature, prescribing the salary of the Register, and the only mode in which it may be changed even by the legislature itself, cannot, we think, be held to be repealed by a subsequent general grant of power to the Common Council in relation to all city salaries, in an act approved at the same time."

Crane vs. *Reeder*, 22 Mich., 334, (1871).

The legislature had passed two acts, on the same day, upon the subject of escheats. One was special, while the other formed a part of the revised statutes.

"The special must be taken as intended to constitute an exception to the general act or provision; especially

when such general and special acts or provisions are contemporaneous—as the legislature are not presumed to have intended a conflict."

Bowen vs. *Lease*, 5 Hill., 221, (1843).

The invariable rule of construction in respect to repealing statutes is, that the earliest act remains in force, unless the two are manifestly inconsistent with and repugnant to each other, or unless, in the latest act, some express notice is taken of the former, plainly indicating an intention to abrogate it."

In the matter of *Egypt Street*, 2 Grant's Cas., (Pa.) 455, (1854,) it was provided, by statute that thereafter "It shall not be lawful to open any street, lane, alley or public road, through any burial ground or cemetery within this commonwealth." A later act extending the limits of the borough of Norristown, empowered commissioners to survey and lay out and mark the lines of such streets, roads, lanes and alleys, as they deem necessary within the said limits." By the Court: "Here there is no inconsistency or repugnancy. The one act directs the commissioners to mark the lines of such streets, roads, lanes and alleys as they deem necessary in a certain part of the borough limits; the other forbids their entry upon burial grounds or cemeteries."

Shinn vs. *Commonwealth*, 3 Grant's Cas., (Pa.) 207, (1856.)

"Both acts were passed at the same session of the General Assembly, and the absence of any repealing clause, referring in terms to the prior act, is strong evidence that the legislature did not intend its repeal."

In *Edrick's case* (5 Co., 118,) the Judges said: "They ought not to make any construction against the express letter of the statute; for nothing can so express the meaning of the makers of an act as their own direct words; for *index animi sermo*."

"The good expositor," says Lord Coke, (case of *Leases*,

5 Rep., 6,) "makes every sentence have its operation to suppress all the mischief; he gives effect to every word in the statute; he does not construe it so that anything should be vain and superfluous, nor yet makes exposition against express words, for *viperina est expositio quæ corrodit viscera textus*, but so expounds that one part of the act may agree with the other, and all may stand together."

Potter's Dwarris on Statutes, 144; Rule 12. *Ib.*, 236. "'Though the words be general,' says the ancient Plowden, 'they are to be reduced to a particularity made according to the intent of the act.' . . Where particular words are followed by general ones, the latter are to be held as applying to persons and things of the same kind with those which precede."

Sedgwick on Stat. & Const. Law, 360. "A thing which is given in particular shall not be taken away by general words." (*Standon* vs. *Univers. of Oxford*, 1 Jon. 26.)

Riddell vs. White, 1 Anstr., 281. An enclosure act directed certain lands to be sold *tithe free;* but made a general reservation in favor of the rights of certain parties therein.

The rector of the parish asked that the purchasers should account to him for the tithes; his right thereto being, as he claimed, within the saving clause.

MACDONALD, C. B.: "The saving clause in the act of Parliament in this case has been argued to destroy the effect of the prior enacting clause, which frees the land in question from the payment of tithe. We are of opinion that it cannot have that force. It falls within the general rule, that a saving repugnant to the purview of the instrument is void."

Rex vs. *Poor Law Commissioners*, 6 A. & E., 7. The 15th and 21st sections of the Poor Law (4 & 5 W. IV., c. 76,) enacted that, except as therein otherwise provided, the powers granted by former statutes upon the

same subject should not be suspended, and "shall in future be exercised by the persons authorized by law to exercise the same."

The 39th section gave to the commissioners the right to interfere in the administration of the existing laws "in *any* single parish;" and that, in such case, new officers should be elected, and should act, in the manner required by the new statute.

COLERIDGE, J.: "What [the Legislature] has clearly said in one part must be the best evidence of what it has intended to say in the other. . . It seems to me that the general words of the [39th] section in question must receive a constrained construction."

De Winton vs. *Mayor of Brecon*, 26 Beav., 533.

An act of Parliament gave to a municipal corporation the power to buy lands for a market. One section ordered the surplus lands so purchased to be sold in a certain way within a limited period. And a subsequent section authorized, by general words, the sale of *any* lands belonging to the corporation.

Sir JOHN ROMILLY, M. R.: "The general clause does not control the specific enactments. . . My opinion is that this general clause must be used consistently with the [prior] clause, which directed particular lands of this corporation to be sold in a particular manner, and this general clause must be construed to apply to the rest of the land of the corporation."

The State (Bartlett, pros.) vs. *Trenton*, 38 N. J. L., 64.

The 83d section of a new charter for the city of Trenton provided two distinct remedies for the collection of certain unpaid assessments; while the 109th section declared that "nothing in this act contained shall be construed so as to destroy, impair or take away any right or remedy given by any act hereby repealed."

The prosecutor of a writ of *certiorari* insisted that, in

the event of a sale of his land under the 83d section, he would be deprived of his right to a trial by jury,—to which he claimed that he was entitled under the 109th section.

VAN SYCKEL, J.: "The legislature must be presumed to have intended what it expressly stated, rather than that which might be inferred from the use of general terms. If, therefore, the proviso of the 109th section is so comprehensive as to embrace the right of trial by jury, it cannot defeat the prior expressed grant of authority to the city to elect between the specified remedies."

Dickerson vs. *Nelson*, 4 Ind., 283. "The ambiguous phrase, with which the 8th section concludes, can have no weight against the explicit language of the precedent matter. If that phrase cannot be reconciled, it must fall."

The State vs. *Williams*, 8 Ind., 192.

Commonwealth vs. *Montrose*, 52 Pa. St., 391. STRONG, J.: "The language of [the 30th] section is, 'that the burgess and town council of *any* borough shall have power, and by virtue of this act are directed and required,' &c. . . The words used are broad, and if they are to be taken without reference to the other sections of the act, they are sufficiently comprehensive to embrace every description of borough within the commonwealth. . . The 1st section enacts 'that every borough within this commonwealth that *hereafter* may be incorporated, . . shall have' certain powers, describing them. . . Every provision [of the succeeding sections] undoubtedly refers to no other boroughs than those that might be incorporated after the passage of the act. . . If the subject matter is any guide to the meaning of the legislature, it leads here to the conclusion that the phrase '*any* borough' signifies any one described in the first section."

If, then, it is clear from the above authorities that had the provisions of the 14th section been enacted in a subsequent law, or in a separate law passed on the same day, they would not operate to repeal the exception in favor of Bloomfield, much less will they so operate where the two provisions are in the same law, for it would be a curious construction to hold that one part of an act repeals another part of the same act.

We conclude, therefore, that the 14th section was not intended to abrogate the exception in favor of Bloomfield, or to any part of that township; nor was it designed to enlarge the scope of the act beyond its effect under the previous sections, but was only intended to apply to changes to be made in the constitution or boundaries of townships previously made liable to the act, and as a necessary consequence Montclair was not thereby made liable to be bonded in aid of the railroad company.

B. But it is further claimed that such a liability was created and imposed upon the new township by the act by which it was incorporated.

This contention rests upon a clause contained in the third section of the act setting off the township of Montclair, which is as follows:

"And all acts and parts of acts in force in the said township of Bloomfield, at the time of the passage of this act, are hereby intended to and shall be in force in the said township of Montclair; *but the provisions of any act or acts from the operation of which the township of Bloomfield has by any proviso or exception therein contained been specially excepted, shall apply to and be in force in said township of Montclair from and after the time this act shall go into effect, the same as if the township of Bloomfield had not been specially excepted therein.*" (Record, page 98.)

To this contention we reply that if this act can be construed as a repealer of the exception in favor of Bloomfield above referred to, so far as Montclair is con-

cerned, and therefore as attempting to render Montclair liable to the provisions of the bonding act, it fails of the purpose, because it is in contravention of that provision of the constitution of New Jersey, Art. IV., § VII., Par. 4, which is as follows:

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but *one object, and that shall be expressed in the title.*"

Our contention is that the obscurely worded repealer contained in the 3d section of the Township Act, is void, because—

1st. It has "no proper relation" to the subject matter of the act, to wit, the setting off a part of Bloomfield into a new township.

2d. It was not a "necessary or proper part" of such object.

3d. It was not expressed in the title.

This constitutional provision has on several occasions been applied and enforced by the highest Courts of New Jersey.

In *Rader* vs. *The Township of Union*, decided by the Court of Errors in 1877, 39 N. J. L., (10 Vroom,) 509, the statute under consideration was entitled "An act in relation to streets in Union township, in Union county."

The first section sets off and incorporates a road district, for the purpose of laying out, opening and improving streets, roads, highways *and public parks*, within the limits thereof. While subsequent sections provided for the building of sewers.

BEASLEY, *C. J.*: "The making and control of streets is entirely different from the making of parks; the two have no connection, and neither is an adjunct to the other, and it is impossible, as it seems to me, to logically hold that a description of one embraces both. The rule

that there must be *a substantial unity* in the statutable object, as indicated by the title, is, in this instance, obviously violated. . . . . .

"It has already been said, that the purpose of the provision requiring the object of the proposed law to be expressed in its title, is *to give notice of and publicity to the proposed legislation*, and such purpose would be thoroughly frustrated, if a rule should be sanctioned having a scope sufficiently wide to embrace and to validate the present act.

"The title of this act is, 'An act in relation to *streets*, in Union township, in Union county,' and it will, on a moment's thought, be perceived how general such an allusion to the legislative purpose is.

"It is true, that it may be difficult to indicate, by a formula, how specialized the title of a statute must be; but it is not difficult to conclude that *it must mean something in the way of being a notice of what is doing.* Unless it does this, it can answer no useful end.

"It is not enough that it *embraces* the legislative purpose—IT MUST EXPRESS IT; and where the language is too general, it will accomplish the former, but not the latter."

The act contemplates "an important change, most materially affecting the property and personal rights of the inhabitants of the district embraced in the law; and yet it is certain the title of this statute would not have conveyed to such persons any intelligible intimation of the project in contemplation."

So in the Court of Chancery of New Jersey, in *Penna. R. R. Co.* vs. *National Railway Co.*, 23 N. J. Eq., (8 C. E. Green,) 457, Vice Chancellor Dodd declares that the things intended to be secured by this clause of the constitution are, "to prevent men from obtaining from the legislature the passage of acts without disclosing their real meaning and purpose; to protect the legislature from being misled by doubtful or ambiguous language; to permit nothing to be acquired from the public by

covert and cunningly devised phrases; to compel those who ask for special privileges to say frankly and unmistakably what they mean, so that plain men cannot fail to understand what it is they are asked to vote away."

See also the same case on page 458.

In *Boyd* vs. *State*, 94 U. S., 645.

A statute of Alabama was entitled "An act to establish a Mutual Aid Association, and to raise funds for the common school system of Alabama." It authorized a lottery, and the corporators, who, under color of this act, set on foot a lottery, were indicted on an old statute of Alabama prohibiting lotteries.

This Court sustained the decision of the State Court, which denied the constitutionality of the act in question, and Mr. J. FIELD in delivering the opinion of the Court, quotes with approbation, the following:

"But granting that the right to set up and carry on a lottery is conferred in the body of the statute, *it is not expressed in the title.* Never was language employed less apt to convey to the mind, learned or unlearned, the idea that the partnership association, the Mutual Aid Society, was to be an undisguised lottery, and that the encouragement of letters, the promotion of science, and the arts which it proposed, was the uncertain prize in currency which might fall to the ticket holder," "and (adds Mr. J. FIELD) because the object is not thus expressed, the act was declared to be unconstitutional. We cannot refuse to give effect to that decision. It is the province of the Supreme Court of the State to construe its own constitution and laws," and when it decides that one of its own laws is not authorized by its constitution, it is not for us to deny the correctness of the decision."

See also,

People vs. *Hills*, 35 N. Y., 449.
People vs. *O'Brien*, 38 N. Y., 193.
People vs. *Allen*, 42 N. Y., 420.
Huber vs. *The People*, 49 N. Y., 132.

Devlin vs. *Mayor, &c. of N. Y.*, 48 How. Pr., 457.
Walker vs. *State*, 49 Ala., 329.

All of which have a special bearing on the question now being considered.

Sedgwick on Stat. and Const. Law, 567.
Cooley's Const. Lim., 81–83, 141–150.

Applying these doctrines to the case in hand, what do we have ?

First, the title of the township act.

"An act to set off from the township of Bloomfield in the county of Essex, a new township to be called the township of Montclair."

This was another way of saying it was an act to divide the township of Bloomfield. It was the stereotyped form by which the legislature had always, from the earliest times, entitled acts by which a new township was created entirely out of an old one.

Yet under such a title, the promoters of this township act sought to confer on the corporation the power, and subject it to the liability of becoming a stockholder in a private corporation to the extent of twenty per cent. of the taxable real estate of the township, and that too by the use of covert and obscure language, which would require a person desirous of learning its meaning, to search through all the legislation of the State in regard to Bloomfield township.

What legislator would have supposed that under a title so simple, and so common, there would be found a power so extraordinary ? What citizen of Bloomfield, knowing that by the bonding act his property could not be taxed for this railroad, would have had the slightest notice or intimation from such a title, that there lurked in the act a provision by which he might be required in effect to mortgage his land to twenty per cent. of the value, in aid of its construction ?

Such an object was no part of the creation of a township, "had no proper relation" to such a purpose, and

has been repeatedly held to be so foreign and extraneous to the ordinary power and liabilities of a township as to require special legislation of the clearest and most unequivocal character to justify it.

In ~~Mayor~~ Mayor &c vs. *Ray*, 19 Wall, 468, the law was stated by Mr. J. BRADLEY in these words :

"Such power (*i. e.* to borrow money) does not belong to a municipal corporation as an incident of its creation."

The same doctrine was held in New Jersey in *Swackhamer* vs. *Hackettstown*, 37 N. J. L., (8 Vroom,) 191.

This title was not "*a head under which*" the creation of a large public debt for the benefit of a private corporation "*might reasonably be looked for.*" (27 Ind., 223.)

It "*misled*" the public as well as the legislature, (8 N. Y., 241 ;)—it was a studied "*concealment of a mischievous purpose,*" (13 Abbott's Pr. Rep. N. S. 121 ;)—it averted "*suspicion or inquiry as to the real subject,*" (35 N. Y., 449 ;)—it did not "*give notice of and publicity to the proposed legislation,*" (39 N. J. L. 509 ;) and, hence, it was "*a fraud upon the public ; a fraud upon the constitution.*" (53 Barb., 70.)

To adopt the language of our New Jersey Courts, the two subjects of the Montclair act are "*distinct and unconnected matters,*" (33 N. J. L., 359 ;) they "have *no connection*, and neither is *an adjunct to the other*, and it is impossible * * * * to logically hold that a *description of one embraces both.*" (39 N. J. L., 509.)

"It is not enough," said Chief Justice BEASLEY in the last cited case, that the title "embraces the legislative purpose ;—IT MUST EXPRESS IT."

No such provision was ever contained in any other of the acts by which the three hundred townships, boroughs and cities of the State of New Jersey, have been created. Whenever such legislation as this has been attempted, it has always been by a special act.

We contend, therefore, that that part of the third section of the act creating Montclair township, which seeks to make it liable to the provisions of the bonding act, is unconstitutional and void.

C. There is still another act on which the defendant in error relies to legalize these bonds. It was passed on the 27th of March, 1874, as a supplement to the bonding act, and is found on page 104 of the Record. It is as follows:

"1. *Be it enacted by the Senate and General Assembly of the State of New Jersey,* That hereafter the township committees for the time being of the township of Montclair, in the county of Essex; the township of Kearney, in the county of Hudson; and the township of Pompton, in the county of Passaic, respectively, shall be the commissioners provided for in the first section of the act to which this is a supplement, and shall discharge all the duties, and be subject to all the liabilities of such commissioners under said act."

"2. *And be it enacted,* That so much of said act as is inconsistent herewith, is hereby repealed, and this act shall take effect immediately."

This statute was referred to and its effect somewhat considered in the case of *Pompton* vs. *Cooper Union*, 101 U. S., p. 202; which was a case arising under this same bonding act, and in speaking of it Mr. J. SWAYNE said:

"In cases like this, legislative ratification is the equivalent of original authority, and what is clearly implied in a statute is as effectual as what is expressed. 1 *Dillon, Mun. Corp.*, Sec. 46; *United States* vs. *Babbitt*, 1 Black, 55. *Whether this statute was a ratification of the sale of the bonds as made, if such ratification were needed, is a point which the view as taken of this case renders it unnecessary to consider.* It was certainly a clear recognition of Pompton as one of the townships authorized to issue bonds in aid of the railroad company—a legislative construction entitled to great respect."

From this citation it is plain that this Court did not either consider the question or decide whether the act of 1874 was or not a ratification of the action of the company who had issued bonds for Pompton township, and is, therefore, no authority on that question.

The effect of this act may be considered in two aspects:

1. As a legislative construction of the act.

2. As a ratification of the previous action had in the name of Montclair township.

(1.) Viewed as a question of construction, it is elementary law that the legislature had no power to determine what the true construction of its previous enactment had been.

This precise question has been recently dealt with by this Court in the case of *Koskkonong* vs. *Burton*, 104 U. S., 678; and Mr. J. HARLAN, in delivering the opinion of the Court, said:

"In this country where the legislative power is limited by written constitutions, declaratory laws, so far as they operate upon vested rights, can have no legal effect in depriving an individual of his rights, *or to change the rule of construction as to a pre-existing law.* Courts will treat such laws with all the respect that is due to them, as the expression of the opinion of the individual members of the legislature, as to what the rule of law previously was. But beyond that they can have no binding effect; *and if the Judge is satisfied the legislative construction is wrong, he is bound to disregard it.*"

So on page 679.

"The contract between the town and the holders of its securities was entered into prior to those enactments, *and the rights of the parties must necessarily be determined by the law as it was when the contract was made.*"

So in the present case the action of the so-called commissioners of Montclair township, the issuing of the

bonds and the purchase by plaintiff below, were all before the enactment of this law, and as a rule of construction it can have no bearing on the question under discussion.

The plaintiff himself testified (Record, p. 110,) that he bought the bonds in suit on the 17th of September, 1873.

The above decision renders unnecessary the citation of any other authorities on this topic.

(2.) Was this act directly or by necessary implication a ratification of the previous action of the commissioners of Montclair township?

~~There~~ This is of course a question of legislative intent to be drawn from the act itself. We respectfully contend that it can have no such effect.

It needs no argument to show that this act contains no direct or express ratification of the bonds in question. It is entirely prospective in its operation, and only relates to duties *hereafter* to be performed. It makes no mention of the bonds, nor does it refer in the remotest way to anything theretofore done by persons acting for these townships. There is nothing in the act to suggest that the legislature knew that any bonds had been issued. It does not manifest the least intention to abrogate or dispense with the jurisdictional provisions of the bonding act, but simply provides for future action under said act, leaving all questions to arise as to the past to be settled by the law as it then stood.

It does not mention, nor allude to, the then *acting commissioners*, or their *acts;* nor *legislate them out of office;* nor provide for the *surrender of their trust*, or the settlement of their accounts.

It does not speak of the *debt*, or the *bonds*, or the *interest* thereon.

It does not validate the *former proceedings;* nor waive any *irregularities* therein.

It does not recognize the existence of the *power*, under which the commissioners had claimed to act.

Nor does it manifest any knowledge of the fact that

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It does not validate the *former proceedings;* nor waive any *irregularities* therein.

It does not recognize the existence of the *power*, under which the commissioners had claimed to act.

Nor does it manifest any knowledge of the fact that

commissioners had ever been appointed, or assumed to act for their townships.

Hence, this Act of 1874 was no express *ratification* of what had been done by the commissioners, in the name of the township. As a rule, curative statutes should be *express* in their terms.

Satterlee vs. *Matthewson*, 2 Pet., 380.
Wilkinson vs. *Leland*, Ib., 627.
Bissell vs. *Jeffersonville*, 24 How., 287.
Gelpcke vs. *Dubuque*, 1 Wall., 175.
Thompson vs. *Lee County*, 3 Wall., 387.
St. Joseph vs. *Regis*, 16 Wall., 644.
Roberts vs. *Bolles*, 101 U. S., 119.
National Bank vs. *Co. of Yankton*, Ib., 120.

But is there a ratification by "*implication?*"

We say that there is not, because such implication must be *clear.*

We assent to the doctrine laid down in *Township of Pompton* vs. *Cooper Union*, 101 U. S., 201—to wit: that "What is CLEARLY implied in a statute is as effectual as what is expressed. 1 Dillon on *Munic. Corp.*, sec. 46; *U. S.* vs. *Babbit*, 1 Black, 6."

The books show that such implication must always be free from doubt. And we refer to some of the cases decided in the same Court, including the one cited in *Pompton* vs. *Cooper Union*, (sup.)

U. S. vs. *Babbit*, 1 Black, 55. The language of the statute was express: "*No register*, or *receiver*, shall receive for his services, during any year, a greater compensation than the maximum *now allowed by law.*" The Court held that it included all officers of the classes named.

Edwards' Lessee vs. *Darby*, 12 Whea., 210. The words of the later act were: "Shall cause to be surveyed, where such surveys *have not already been made.*" And the Court said: "This provision must be construed as

recognizing the validity of and as ratifying the surveys which had been made by the commissioners under the act of 1782."

Gelpcke vs. *Dubuque*, 1 Wall., 220. "In this act it is clearly implied that cities have authority to subscribe for railroad stock, and to issue their bonds in payment of it."

The statute fixed the rate of interest on the bonds and allowed them to be sold by the railroad companies at prices below their par value, and expressly declared that its provisions should "apply to any railroad bonds *which have been heretofore issued*, as well as to those which may hereafter be issued."

And it happened that the bonds in controversy had been issued *after* the passage of the explanatory act.

Campbell vs. *City of Kenosha*, 5 Wall., 194. The later act provided for the appointment of a railroad commissioner, who "shall receive all funds *paid* into the hands of the city treasurer, on account of the tax for the benefit of the Kenosha and Beloit R. R. Co., and shall hereafter redeem all scrip *which has been issued* to said railroad company, as the same becomes due."

DAVIS, *J.*: "This is not in terms a curative act, but it has that effect by fair implication. . . If by a direct act, equally in any other way; *if the intention of the legislature to legalize clearly appears.*" . . It was "a full legislative recognition of the legality of the subscription, and the issue of the scrip. . . . The words of the law are imperative. The commissioners shall redeem the scrip; surely the legislature would not commend this to be done, unless it intended to recognize the validity of the scrip. 'To redeem all scrip *which has been issued* to said railroad company, as the same becomes due,'—the very words of the law,—can mean nothing else than that such scrip had received legislative sanction, and, in the opinion of the lawmakers, ought to be paid."

Beloit vs. *Morgan*, 7 Wall., 619. The language of the second act was: "All bonds *which have been heretofore issued*," etc.

We also refer to the case of the *Kent Coast Railway Co.* vs. *London, &c., Railway Co.*, 3 Law Rep., Ch. App., 656. An act of parliament had authorized the leasing upon certain conditions of a certain line of railway to another company. The conditions had not been performed; and only the heads of an agreement for a lease had been drawn. Subsequent acts contained various references to the matter; but there was no direct expression of an intention to validate the proceeding.

Sir WILLIAM PAGE WOOD: "We think that if the legislature had intended to give validity to an arrangement which was, in our judgment, altogether invalid, at least up to 1864,—it would have done in so in plain and distinct words."

The *clear implication* above referred to must be a necessary implication—such as is required to make a subsequent statute repeal a former one, when there is no express repealer.

Mr. Justice SWAYNE defined such an implication in *McCook* vs. *Smith*, 1 Black, 470, when he says:

"A repeal by implication is not favored—the leaning of the courts is against the doctrine, if it be possible to reconcile the two acts together."

So in this case the act will not be considered as a ratification of the bonds already issued, if it be possible for it to have effect without.

There was nothing in the bonding act to limit the time within which proceedings under it must be begun.

It was competent for such proceedings to be commenced at or after the passage of this act of 1874. It therefore had no necessary operation on the past; but from its whole scope and limit was future and prospective in its terms and operation.

The most that can be *implied* from it is that the legislature considered that Montclair was or might be subject to the original act, and we have before shown the only effect to be given to such an expression of the legistative opinion.

Maxwell on the *Interpretation of Statutes*, 287: "An act of parliament *does not alter the law* by merely betraying an erroneous opinion of it. For instance, the 7 Jac. 1, c. 12, which enacts that shop books shall not be evidence above a year before action, did not make them evidence within the year, though the enactment was obviously passed under the impression, not improbably confirmed by the practice of the courts in those days, that they were admissible in evidence. *Pitman* vs. *Maddox*, 2 Salk., 690."

Wilberforce on *Statute Law*, 13: "An erroneous declaration of existing law is wholly inoperative. Speaking of an act which was apparently based upon an erroneous view of the law of partnership, the Privy Council said: 'The enactment is no doubt entitled to great weight as evidence of the law, but it is by no means conclusive; and when the existing law is shown to be different from what the legislature supposed it to be, the implication arising from the statute, cannot operate as a negative of its existence.' *Mollwo* vs. *Court of Wards*, L. R., 4 P. C., 437; *Earl of Shrewsbury* vs. *Scott*, 6 C. B., N. S., 141; Ex parte *Lloyd*, 1 Sim. N. S., 250; *Metcalfe* vs. *Hanson*, L. R., 1 H. L., 250."

Dore vs. *Gray*, 2. T. R., 358: An erroneous recital that sewers, etc., of a certain class were not under the survey ot the Commissioners of Sewers, nor of the statute of 23 Henry VIII., did not take away the jurisdiction which that act had given to the commissioners.

Postmaster General vs. *Early*, 12 Whea., 148. An act of Congress gave jurisdiction of a certain kind unto the District Courts, concurrently with the Circuit Courts, it being based upon the error that such jurisdiction already existed in the Circuit Courts.

The Supreme Court said: "A mistaken opinion of the legislature concerning the law does not make the law. But if this mistake is manifested in words competent to make the law *in future*, we know of no principle which can deny them this effect. The legislature may pass a declaratory act, which, though *inoperative on the past*, may *act in the future*."

The application is obvious—the legislature may have supposed that Montclair was included within the terms of the Bonding Act of 1868; but, if they were mistaken in such belief, the Supplement of 1874 will not aid the unlawful issue of bonds in 1870.

We think no case can be found where an act apparently so destitute of all intention to ratify past illegal transactions has been held to have that effect.

If there be, in the act of 1874, an implied grant of power, it is *a new power* and does not relate to nor validate the former proceedings.

We, therefore, respectfully insist that none of the acts of the legislature relied on as authority for the issuing of these bonds are sufficient to authorize it.

It is a significant circumstance in this connection that the recital in the bonds referring to the authority under which they were issued makes no mention of the Township act or any other authority than the original Bonding act. (Record, page 3 and page 2.)

II

The next error on which we shall insist this judgment should be reversed are those assigned as follows:

Seventh. There is also error in this, to wit, for that the said Judge on the said trial overruled a question which defendant's counsel put to a witness, Arzy Van Giesen, as follows: "Before making the affidavit on this "Exhibit (No. 15), what steps did you take to inform "yourself as to whether the consents contained in this

"document were signed by the requisite number and "amount of taxable property and land-owners?" and refused to permit the question to be answered by said witness.

Eighth. There is also error in this, to wit, for that on said trial the said Judge overruled a question which defendant's counsel put to the witness, Arzy Van Giesen, as follows: "Did you, before making these affidavits, "cause to be prepared an assessment roll by extracting "from the assessment roll of the township of Bloomfield "for 1867 all that related to any assessment of persons or "property in the territory embraced in the township of "Montclair before you made these affidavits?" and refused to permit the said question to be answered by said witness.

Ninth. There is also error in this, to wit, for that on the said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Did the commissioners, Messrs. Hening, Harrison and Littell, prepare and submit to you any such assessment roll?" and refused to permit the said question to be answered by said witness.

Tenth. There is also error in this, to wit, for that on the said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Did you make any inquiry to ascertain whether the persons whose names were signed to the consents on which you endorsed your affidavits, were owners of, or represented as agents or president, the property in respect to which they signed?" and refused to permit the said question to be answered by said witness.

Eleventh. There is also error in this, to wit, for that on the said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Did you know or had you been informed at the time you made your affidavits that your predecessor in office had refused to make the affi-

davits to bond the town?" and refused to permit the said question to be answered by the said witness.

Twelfth. There is also error in this, to wit, for that on the said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Was the business of making the affidavits endorsed on these consents transacted by you under circumstances of haste or unusual expedition?" and refused to permit the said question to be answered by said witness.

Thirteenth. There is also error in this, to wit, for that on the said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Were you informed at the time of making the affidavits or before they were made, that an injunction was apprehended to prevent the issuing of the bonds referred to in the consent?" and refused to permit the said question to be answered by the said witness.

Fourteenth. There is also error in this, to wit, for that on said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Were you, at or before the time of making your affidavits, informed that some owners whose names appeared as signers on these consents had withdrawn their consents, or requested their names to be withdrawn from these consents?" and refused to permit the said question to be answered by said witness.

Fifteenth. There is also error in this, to wit, for that on said trial the said Judge overruled a question which defendant's counsel put to the said witness, Arzy Van Giesen, as follows, viz.: "Did you, before making the affidavits or at the time of making them, have any conference with Mr. Crane, your predecessor, on this subject?" and refused to permit the said question to be answered by said witness.

Sixteenth. There is also error in this, to wit, for that on said trial the said Judge overruled another question

which defendants' counsel put to said witness, Arzy Van Giesen, as follows, viz.: "Did you have any such conference at the time of or before making the affidavit, with Joseph K. Oakes, the assessor of the township of Bloomfield for the year 1867?" and refused to permit the said question to be answered by said witness.

Seventeenth. There is also error in this, to wit, for that on said trial the said Judge overruled another question which defendants' counsel put to the said witness, Arzy Van Giesen, as follows, to wit: "Mr. Van Giesen, the records of the commisioners for bonding Montclair township of a meeting on March 16, 1870, have been put in evidence in this cause, that the commissioners satisfied themselves by the certificate of the assessor that the requisite amount of property owners had signed in favor of bonding. Did you furnish the commissioners on the 16th of March, 1870, a certificate that the requisite amount of property owners had signed in favor of bonding?" and refused to permit said question to be answered by said witness.

Eighteenth. There is also error in this, to wit, for that on the said trial the said Judge overruled a question which defendants' counsel put to a witness, Jared E. Harrison, as follows, viz.: "It appears by the record kept by Mr. Littell, as Secretary of the commission, that on the 16th of March, 1870, the commissioners satisfied themselves by the certificate of Mr. Van Giesen that the requisite amounts had signed the consents. State, if you please, what the commissioners took from Mr. Van Giesen to satisfy them about that?" and refused to permit the said question to be answered by said witness.

Nineteenth. There is also error in this, to wit, for that on said trial the said Judge overruled a question which defendants' counsel put to the said witness, Jared E. Harrison, as follows, viz.: "Did the commissioners before issuing those bonds cause to be prepared an assessment roll for the township of Montclair, by extract-

ing from any assessment roll for the year 1867 of the township of Bloomfield, all that related to any assessment of persons and property in the territory embraced in the township of Montclair," and refused to permit said question to be answered by said witness.

Twentieth. There is also error in this, to wit., for that on said trial the said Judge overruled another question which the defendants' counsel put to the said witness, Jared E. Harrison, as follows, viz.: "Did they prepare such an assessment roll for the year 1867 of persons and property included in the territory of the township of Montclair?" and refused to permit said question to be answered by said witness.

Twenty-first. There is also error in this, to wit, for that on said trial the said Judge overruled a question which defendants' counsel put to the said witness, Jared E. Harrison, as follows, viz.: "Did the commissioners, in determining whether the requisite amount of land owners had signed the consents, make use of any such assessment roll of Bloomfield for either 1867 or 1869?" and refused to permit the said question to be answered by said witness.

Twenty-second. There is also error in this, to wit, for that on said trial the said Judge overruled a question which defendants' counsel put to the said witness, Jared E. Harrison, as follows, to wit: "Did the commissioners or the assessor, before the issuing of these bonds, make use of any assessment roll prepared from the assessment roll of the township of Montclair for the year 1869, or from any previous assessment roll made from the township of Montclair?" and refused to permit the said question to be answered by said witness.

Twenty-third. There is also error in this, to wit, for that on said trial the said Judge overruled a question which the defendants' counsel put to said witness, Jared E. Harrison, as follows, viz.: "Before the bonds were issued were you aware that Mr. Crane, the former assessor, was unwilling to make the necessary affidavit

that the amount of consents had been obtained?" and refused to permit the said question to be answered by said witness.

Twenty-fourth. There is also error in this, to wit, for that the said Judge on the said trial refused to permit the defendants' counsel to examine the said witness, Jared E. Harrison, as to the correctness of a previous statement made by said witness concerning the issue of the bonds declared on, in this cause, in the answer put in by him to a bill in Chancery of New Jersey, the object of which was to enjoin and prevent the issue of said bonds.

Twenty-fifth. There is also error in this, to wit, for that on the said trial the said Judge refused to admit in evidence in said cause the record and proceedings in a certain suit in Chancery of New Jersey, wherein William Frame was complainant, and Robert M. Hening, Jared E. Harrison and Hiram B. Littell, and the Montclair Railway Company were defendants, and overruled the offer of defendants' counsel to read the same in evidence.

Twenty-sixth. There is also error in this, to wit, for that the said Judge on the said trial refused to admit in evidence the assessor's duplicate or assessment roll for the year 1867, for that portion of the township of Bloomfield included within the bounds of the township of Montclair, and overruled the offer of defendants' counsel to read the same in evidence in said cause.

Twenty-seventh. There is also error in this, to wit, for that the said Judge on the said trial refused to permit the defendants to prove and give in evidence the fact that the consents which were filed in the office of the County Clerk of Essex county in respect to the bonds issued for Montclair township, did not in fact represent two-thirds in value of the real estate and landed property of the township of Montclair for the year 1867, by a deficiency of $96,620.

Twenty-eighth. There is also error in this, to wit, for that the said Judge on the said trial refused to permit the defendants to prove or give in evidence the fact that no assessment roll was prepared for the purpose of issuing the said bonds for the township of Montclair, by extracting from the assessment roll of Bloomfield township so much as related to the taxable persons and property in the township of Montclair.

Twenty-ninth. There is also error in this, to wit, for that the said Judge refused on said trial to permit the defendants to prove or give in evidence the fact that the said consents signed by the owners of real estate represented less than two-thirds of the taxable real estate and landed property of said township for the year 1869, by a deficiency of $17,307.

Thirtieth. There is also error in this, to wit, for that the said Judge on said trial refused to permit the defendants to prove or give in evidence the fact that Zenas S. Crane, while he was assessor of Montclair township, refused to make affidavit that the requisite amount had been obtained in reply to applications on the part of the commissioners that he should make such affidavit.

Thirty-first. There is also error in this, to wit, for that the said Judge on said trial refused to permit the defendants to prove or give in evidence that the suit in the Court of Chancery of New Jersey, brought by William Frame and referred to in the 25th assignment of errors, was brought by said Frame as the representative of a large number of the tax payers of the township of Montclair, who were associated with the said William Frame in the bringing of the suit for the purpose of arresting the issuing of the bonds in question in this cause.

Forty-fourth. There is also error in this, to wit, for that the said Judge on said trial not only refused to charge the jury as requested by defendants' counsel, that if the jury believe that the bonds were disposed of by the commissioners by fraudulent collusion with the rail-

way company, in violation of the act, it was a fraud upon the law, and the bonds never having been legally issued they are invalid in the hands of the plaintiff, but on the contrary charged the jury that no matter what amount of fraud there may have been between the officers or agents of the town on the one hand, and the railway company on the other, in regard to the issuing of these bonds, unless a knowledge of that fraud be brought to a *bona fide* purchaser, he is not affected by it.

Forty seventh. There is also error in this, to wit, for that the said Judge on said trial charged the jury that if the testimony of Mr. Littell was true, there was no question of fraud left for the jury, and it was the duty of the jury to find a verdict for the amount of principal due on the bonds and accrued interest.

It will be seen that the effect of these assignments of error is to present the question whether the Court did right in shutting out all evidence of illegality in the issuing of these bonds, and of want of compliance with the statutory prerequisites.

The offers and rulings of the Court, so far as these assignments relate to the evidence of Van Giesen, the assessor, are found on pages 189 to 191, inclusive.

So far as they relate to the evidence of Jared E. Harrison, are found on pages 195, 196, 202, 203 and 204.

As to the subject matter of the 25th assignment of errors, the offer, ruling and exceptions are found on pages 202, 203 and 204 of the record.

The 26th, 27th and 28th, 29th and 30th, and 31st exceptions are founded on the offers of defendants' counsel, and the rulings of the Court thereon, on pages 204 to 207, inclusive.

The 44th assignment is founded on the request to charge, and the Judge's response, on pages 210 and 211, and the 47th is founded on the charge and exception found on page 212.

These assignments are grouped together because they are all parts of the same error into which the Judge fell on the trial of the cause, which was that all evidence of illegality or fraud was *inadmissible* unless defendants would offer to connect the plaintiff with it by proof of notice to him, and that the Court could and did withdraw from the jury the right of passing upon the question whether or not the plaintiff was a *bona fide* holder.

This error is manifest from the record.

(See page 189. So also pages 191, 203, 205, 206, 207, 210.)

The true and elementary rule which gives to a holder of commercial paper immunity from attack, is that he must be both a *bona fide holder for value, and without notice of the defects;* if his title lacks the element of *bona fides*, the facts may be shown without previous notice, and *e converso*, if he has notice, it makes no difference how his title may be in other repects *bona fide* or for value.

The practice adopted by the Judge on this trial was in direct conflict with the ruling of this Court as then announced.

Smith vs. *Sac County*, 11 Wall., 139.

(Opinion of MILLER, *J.*, pages 146–7.)

(Also in dissenting opinion of J. CLIFFORD, on page 159.)

This precise question has been recently before this Court in

Stewart vs. *Lansing*, 104 U. S., 505.

Which case was in many respects analagous to the one now before the Court.

(The views of the Judge on these questions are expressed in the record of the case, No. 147, on pages 219, 220, and if the Court consider it fair to the Judge to know the grounds of his decision this will be found there.)

Such being the law, was the evidence offered and overruled, in connection with that which was in the case, sufficient to cast that burden on plaintiff below?

The law expressly prohibited the issue of the bonds "until the written consent of persons owning, or representing as agent or president, at least two-thirds of the real estate and landed property of said township, town or city, borne on the last assessment roll thereof, at the valuation thereon appearing, shall have been obtained." (Record, 101). And the 14th section, before cited, provides in case of a new or enlarged township, "*The said commissioners shall cause to be prepared* an assessment roll for the purposes of this act, by extracting from any assessment roll or rolls of persons or property in the territory in the said new township," &c., &c. (Record, 104.) Of course without such consent the issue of the bonds was totally illegal.

Now the defendants below were prepared and offered to show that this prerequisite was totally disregarded.

That the consents filed did not contain the required two-thirds—that no attempt was made to prepare an assessment roll, as required by the 14th section, and that, in fact, the consent of two-thirds was never obtained.

That, on these grounds, the inhabitants of the township caused a suit in equity to be instituted and obtained an injunction to prevent the issue of the bonds, and that the defendants, the railroad company and the ~~compa-nies~~ commissioners answered falsely, setting up a *bona fide* issue of the bonds before the injunction was obtained.

3d. That Crane, the former assessor, refused to make the affidavit necessary to justify the issue of the bonds.

That Van Giesen, his successor, knowing of such refusal, made his affidavit on the day on which he was sworn into office, without making the least inquiry or attempting to satisfy himself of the truth of the fact sworn to.

That the commissioners knew of Crane's refusal.

In addition to the foregoing, which was offered and overruled, it was proved that the commissioners acted on a certificate of the assessor made on the 16th day of March, 1870.

(Record, p. 174.)

Van Giesen was not sworn into office until March 17th, which was the day after his election.

(Record, 187, 188.)

The commissioners and the railroad company knew an injunction had been applied for, and they left the State to avoid its service.

(Jared E. Harrison, p. 197; do. page 198.)

They went through the form of a fictitious sale for a worthless check of $200,000, which was never deposited or used, but was a device to evade the law.

(Harrison, pp. 198, 199; Littell, 148, 158.)

The bonds were stamped to bear date a day before they were actually issued.

(Harrison, p. 200; Littell, p. 148.)

A false record was made in the commissioners' minutes of the date of the transaction.

(Record, pp. 175, 176.)

At least two of the commissoners refrained from going to their homes on the night of the 17th, to avoid the injunction.

(Harrison, p. 200; Littell, p. 162.)

That Commissioner Harrison's affidavit as to the signatures on the consents was false.

(Harrison, p. 193.)

The same is true of Commissoner Littell, page 167.

That the commissioners in fact exchanged the bonds for worthless, unsecured income bonds, on which the township never realized a dollar.

(Record, 204.)

The township authorities never recognized the transaction, and utterly refused to receive the R. R. income bonds from the commissioners.

(Littell, page 146.)

These facts, with such as were overruled, were abundant to put plaintiff on proof of the *bona fides* of his ownership, and to have required the jury to pass upon that question.

It cannot be claimed that plaintiff's proof on that point was so clear as to justify the Court in withdrawing the question from a jury.

What were the facts as disclosed by plaintiff's own evidence?

A. Under the facts above proved it cannot be claimed that the railroad company, to which the bonds were originally issued, was a *bona fide* holder.

It had full knowledge of all the illegality and fraud, and was a participant therein.

B. The railroad company negotiated the bonds in this suit to E. D. Morgan & Co. (Page 105.)

They were pledged originally to the Oswego and New York Midland Railway Company; $64,000 of the bonds to secure a note of $30,000. (Record, 125.)

1. It does not appear that the payee of that note ever authorized a repledge of these bonds to E. D. Morgan & Co., or that the president of that company was authorized to indorse, so as to repledge the bonds.

If, as the fact was, the bonds were negotiated by the Montclair Railway Company, there is no evidence to show that the Oswego and New York Midland Railway Company was authorized by its charter to become accommodation indorser for the Montclair Railway Company, and thus doubt is at once cast upon the title of E. D. Morgan & Co.

2. The contract by which E. D. Morgan & Co. acquired their right to the bonds was usurious and void.

E. D. Morgan & Co. gave their note in exchange for the railway company's note, at four months without interest, and received a so-called commission of two and one-half per cent. (Terry, p. 108.)

2 Rev. Stat. of N. Y., (Banks Bros. Ed.,) page 1165, § 5.

Dunham vs. *Gould*, 16 Johns., 367.

Can a man be an innocent and *bona fide* purchaser by a contract which is not only void, but an indictable misdemeanor?

C. Was Dana, the plaintiff, a *bona fide* purchaser?

He bought them at a sale made by E. D. Morgan & Co., (by Muller & Co., auctioneers,) to obtain satisfaction of the note.

(Terry, p. 105; Smith, p. 109.)

It was not lawful for Morgan & Co. to become buyers at a sale where they were sellers.

2 Jones on Mortgages, (3d Ed.) 1876.

If Dana's purchase was merely to avoid that rule of law, he was no *bona fide* buyer.

We respectfully insist that there was a total failure on the part of Dana to prove that he was a *bona fide* buyer, or that he ever in fact paid a dollar for them.

Mr. Terry, who was a member of the firm of E. D. Morgan & Co., testified on his first examination that after the order for the sale of the bonds was given, his bookkeeper attended to the matter, and he had no personal knowledge of the sale. (Record, p. 109.)

He also says on page 106, in reply to an inquiry if he knew who bought the bonds—

"*I think* they were bought by Mr. Charles Dana.

"*Q.* Did Mr. Charles Dana pay you?

"*A.* *We received it—I suppose we received it from the auctioneer; that is my recollection of it.*

"*Q.* The proceeds of the sale?

"*A.* The proceeds of the sale; yes, sir."

Mr. Dana, the plaintiff, was sworn; he was a confidential friend of E. D. Morgan & Co., and had a desk in their office. (Page 121.)

He first heard of the proposed sale the morning of the sale, or the day before. (Page 112.)

On page 111 he says the first knowledge he had of the sale was by a bill left in his office on the morning of the sale.

He knew nothing of the bonds, except that one William A. Guest told him they were good bonds, and would be sold cheap, and yet without further knowledge or inquiry, he, at a few hours' notice, invested $36,000 in them. (Page 113.)

He had no idea of buying the bonds until he was told of them by Terry. (Page 120.)

He went to the sale for the express purpose of buying these bonds. (Page 121.)

They were sold at an enormous discount for good bonds, $36,000 for §64,000 of bonds.

The bonds themselves were not produced at the sale, but remained in custody of E. D. Morgan & Co., except that one was shown at the sale as a sample. (p. 113.)

He paid no cash or money for the bonds, but paid for them by an order on E. D. Morgan & Co., in favor of Muller & Son. (Page 117.) It is as follows:

"E. D. MORGAN & Co.: Please pay A. H. Muller & Son for sixty seven thousand dollar bonds bought of them this day, upon their delivery to you of said bonds, and charge the same to

"Sept. 17, 1873. CHARLES DANA."

This was for no amount, and did not specify how much they were sold for.

It was clearly fictitious as to the delivery of the bonds to E. D. Morgan & Co.

The sale was not in accordance with the usual custom. The auctioneer usually delivers the bonds.

(Redmond, page 122.)

Dana had a running account with E. D. Morgan & Co. as his bankers, but he does not know that he had enough in their hands to pay for the bonds or not. (Page 112.)

He swears distinctly (on page 171) *that he had no knowledge whether the amount he bid for the bonds had ever been charged to him by E. D. Morgan & Co. or not.*

All he can say is, that while he swears in a general way that he paid for the bonds, he has not settled his

account with E. D. Morgan & Co. for many years. (p. 116.)

He pays in money and draws it out, and an interest account is kept.

He swears that he did not make any specific deposits to apply to this order. (117)

He cannot tell how long after the sale the bonds remained in the hands of E. D. Morgan & Co., (page 114) but although he says they were delivered to him and put in his box, the book-keeper of E. D. Morgan & Co. had access to that box, and whenever Dana was going out of the country the bonds were returned to E. D. Morgan & Co. (Pages 115–116.)

John T. Terry was recalled (page 178), and on his re-examination stated distinctly that he did not know that Dana had ever paid for the bonds, except as he saw the draft, (179.) Nor could he tell when the bonds were delivered to Dana, (179.)

He says his clerk who attended to the matter could tell about it, (179).

That clerk, Sereno M. Smith, was called as a witness, and examined (on page 109), but he is totally silent on these matters.

The books of E. D. Morgan & Co. were not produced, and although Terry, on his second examination, said he had examined the books, and that Dana at the time of drawing the order had to his credit only $33,300 and odd, (page 180), but even by this kind of evidence, illegal as it was, and admitted against our objection, (180), he could not swear, and did not, that the order was ever charged to Dana.

In fact such unaccountable reticence makes the remark made by the Chief Justice in the case of *Stewart* vs. *Lansing*, above cited, that the proof was more remarkable for what it omitted than for what it showed, applicable equally well to this case.

Certainly here was evidence enough to justify a jury in finding that Dana had never paid a dollar for the bonds,

but that the auction sale at which he bought them was colorable and fictitious.

The case of *Stewart* vs. *Lansing* must control the present case.

The Court should have admitted the offered evidence of fraud and illegality, and the jury should have been permitted to pass on it, as well as on the question whether Dana was a *bona fide* buyer of the bonds for value.

Yet the Court refused to hear all evidence as to the illegality of the bonds or the fraudulent nature of their issue, but virtually instructed the jury to disregard such evidence as was offered tending to show the want of *bona fides* in Dana's purchase.

He instructs the jury on page 211:

"I am bound to say to you that the evidence seems to show *without dispute* that he is a *bona fide* holder. Evidence was offered by the defendants tending to prove, *but I think without success*, that the plaintiff went to the auction rooms and purchased the bonds for E. D. Morgan & Co., the parties with whom they were pledged as collaterals for the payment of a note. But Mr. Terry, one of the partners, says that it was an absolute sale so far as they were concerned, made to the plaintiff for the sum of $36,000, and that they had no interest in them directly or indirectly since the sale. You will please have no difficulty with the fact that he bought them for less than their par value. He is none the less a *bona fide* holder for value on that amount." And afterwards, on page 212, after quoting the evidence of Mr. Littell, (which related only to the issuing of the bonds, and had no reference to the question of *bona fides*,) he says: "If this testimony is true there is no question of fact left for the jury, and it will be your duty to find a verdict for the plaintiff for the amount of principal due on the bonds and the accrued interest." Thus withdrawing from the jury every question of fact in the case except the credibility of Littell's evidence.

III.

The next assignment of error on which we rely, is the the forty-first, as follows:

Forty-first. There is also error in this, to wit, for that the said Judge on said trial, although requested so to do by defendants' counsel, refused to charge the jury, "that whatever evidence there is, if any, as to the bonds being sealed, must be submitted to the jury, and that on such evidence the jury must find whether or not the bonds were in fact sealed," but on the contrary, charged the jury that that was not a question for the jury, but it was a question of law whether they were sealed or not; that there was no doubt but what there was a scroll, and the scroll is all the law requires on instruments for the payment of money.

This request, refusal and charge are found on page 209; the exception is on page 211.

The bonds, as will be seen by inspection, are on printed blanks, on which the printer had printed the letters L. S., in brackets, opposite the places where the commissioners were to sign. These initials have a recognized meaning—*locus sigilli*, and they indicate the place where the seal is to be affixed.

The Judge held *as a question of law*, that they constituted scrolls such as the statute of New Jersey permits to be substituted for seals. That statute is as follows:

"That any bond or other instrument in writing, to which *the obligor or person named therein, or who signed the same, shall have affixed a scroll*, or ink, or other device, by way of a seal, shall be taken and adjudged to be of the same force and effect as if it was actually sealed with wax." Revision of N. J., 741

This plainly requires that the device thus made equal to a seal must be affixed by "the person who signed the same."

It may be that the words and meaning of this act would be satisfied if the device was not actually affixed

by the signer, but if it was not, there should be some evidence to show that the signer intended to adopt it as a seal or scroll.

No such evidence was found or offered.

Hiram B. Littell, one of the commissioners, says on page 147, in reply to a question:

"Did you see these bonds executed?

"*A.* Do you mean by that—*seeing them sign their names to that paper?* I would not like to swear I did see that.

"*Q.* Tell us what you did see?

"*A.* We were sitting at a table in a row, and Mr. Hening *signed* first, and then passed to Mr. Harrison, and then passed to me.

"*Q.* Were there two names—R. M. Hening, J. E. Harrison—there before you put your signature?

"*A.* They were.

"*Q.* They were all done at the same time?

"*A.* Yes, sir."

Again, on page 165, he says that he first saw the bonds on the day before their issue; they were presented by the railroad company, and all the commissioners did was to sign them.

So on page 199, Mr. Harrison, another commissioner, says that the railroad company had the bonds ready for them—they (the commissioners) did nothing but sign them in the condition in which they found them.

And Mr. Littell says on page 154, that when the bonds were produced before them they were in the same shape and fashion that they are now.

The above is all that is said by the witnesses on the subject, and does not afford the slightest evidence that the commissioners intended to seal, or to adopt the [L. S.] already on the paper as their seals.

The case of *Bates* vs. *Boston & N. Y. Cent. R. R. Co.*, 10 Allen, 251, is very much in point on this question,

and cites from Sugden on Vendors, to show that in the execution of a deed there are required three distinct acts: 1. The determination in the mind to do the act; 2. The signing of the instrument; 3. The sealing.

It should have been left to the jury therefore to say whether the commissioners by signing opposite the initial letters designed to show where the seals were to be affixed, intended to adopt them as their seals.

Such a question is always a question of fact and not of law.

It may be said, however, in view of the recent case of *Draper* vs. *Springport*, in this Court, the existence of a seal is immaterial, and therefore no harm was done by the ruling.

Draper vs. *Springport*, 104 U. S., 501.

That was a New York case, and does not show what the form of the pleadings was or what issue they presented.

In New Jersey, however, the common law practice of pleading to an issue is maintained, and here the issue and the only issue was "*non est factum.*"

In that form of pleading, the sealing can never be immaterial; it is the very fact put in issue by the plea of *non est factum.*

Again. If there was any point of view in which the question of sealing could be at all material, it should have been submitted to the jury.

Now, even according to the case of *Draper* vs. *Springport*, (*supra*,) the question of sealing is material as a matter of notice to the buyer.

It has been commonly held in this Court that the certificate in the bonds that they were issued in pursuance of the law, estopped the party issuing from denying the fact so certified. It is submitted, however, that such certificate can have no such effect when on its face it is clearly and palpably untrue.

The statute, with which every person dealing in the bonds must acquaint himself, directs that the bonds be issued under the hands *and seals* of the commissioners.

If they were not sealed, an inspection of the bonds would disclose the departure from the statute, and would afford complete evidence to the buyer that he could not rely on the certificate, and would naturally and necessarily put him on inquiry as to other matters in regard to which the certificate would otherwise conclude the township authorities.

The fact that the buyer had notice that the statute was departed from in a matter which in various respects made an important change in the legal quality of the bonds, would open the case to the proof of the departure from the act, and would legalize evidence to that effect.

Estoppels which shut out the truth are not favored in law, and are only resorted to as a means of preventing fraud. This cannot be invoked in favor of a party who knew that the declaration was unreliable.

If the bonds were issued in such form that it required proof as to the circumstances attending their issue to enable the jury to decide whether they were sealed or not, such inquiry would also have been incumbent on a purchaser, and such inquiry would have necessarily disclosed many of the defects, the proof of which was excluded by the Judge.

The error of the Judge in holding that the question of sealing was a question of law for a Court, was one which materially prejudiced the plaintffs in error on the trial.

There is no hardship or ~~inequality~~ inequity in applying such a rule to the present case, because Dana bought these bonds with full notice of the decisions of the Supreme Court and Court of Chancery of New Jersey, both of of which had, before his purchase, decided that bonds of this character were subject to such proof as was offered and overruled in this case.

The only bonding act ever passed by the legislature of New Jersey, besides the one now under consideration, was one passed the same day, (April 9, 1868,) entitled

"An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company." (N. J. Session Laws of 1869 p. 915.)

An inspection of this act will show that its second section, which (as in the present law) describes the conditions on which the bonds are to be issued, is precisely similar to the second section of the present act so far as it relates to the questions involved in this case.

Yet in 1869 the Court of Chancery of New Jersey, in *Lane* vs. *Schomp*, 20 N. J. Eq., page 82, held that the affidavit of the assessor was not conclusive proof of the facts stated therein, and allowed an injunction against issuing the bonds, based on proof that the assessor's oath was untrue.

The Chancellor in that case, on page 88 of the report, says: "The defendants contend that the affidavit of the assessor is in the nature of an adjudication, and estops the complainant from inquiring into its truth. IT IS IN NO SENSE AN ADJUDICATION BUT SIMPLY EVIDENCE; it is made so by the statute, which OMITS TO MAKE IT CONCLUSIVE even as evidence. . . . . .

"The provisions of a statute, to make them conclusive, should be very explicit and clear. Like the acknowledgment and proof of deeds, and the proof of wills, which by statute are made evidence by much the same words, they are *prima facie* evidence, and may be rebutted by any lawful proof. . . . . .

"The defendants admit that they intend to issue these bonds. . . They have no authority to do this; and the complainants are entitled to an injunction to restrain them. . . . . .

"These commissioners are not a municipal corporation, exercising legislative functions or discretionary powers. But they are ministerial officers, on whom power is conferred by a special statute, to be exercised only upon certain conditions."

The same Passaic Valley and Peapack act (P. L., 1868.

p. 915,) also came before the Supreme Court of New Jersey, in June term, 1873. (*Morrison* vs. *Bernards*, 36 N. J. L., 219.)

BEASLEY, *C. J.:* "When the provisions of a statute have beeen infringed or disregarded by public officers, and such provisions are publicly known, the statute must have effect, and no estoppel from such official misconduct can be interposed. This is the doctrine laid down with marked emphasis by Lord DENMAN, in *Regina* vs. *White*, (4 Ad. & El., N. S., 101,) and such doctrine can never be more applicable than in the present case.

"The statute in question is a public act; the commissioners are the *special*, and not the general agents of the corporate body, and their capacity to issue these bonds is made dependent on the vote of a specified body of persons.

"In general, those dealing with a *special* agent must inform themselves, at their peril, of the extent of the authority of such agent, and the present is, certainly, not an occasion in which the rigor of this principle should be in any degree relaxed.

"*The act directs that the evidence of the existence of the authority of the commissioners shall be put upon the public files, so that the fact whether the bonds have a legitimate existence, can be easily and certainly ascertained.*

"If a purchaser takes them without inquiry, and they turn out to be illegal, because a prerequisite has been omitted, the embarrassment of his position is attributable to his own carelessness; and if a loss is to be incurred, it is more just that it should fall upon him rather than upon the public who is in no default. Under such circumstances, the corporate body cannot be estopped, by the acts or declarations of their agents, from impeaching instruments put in circulation, without authority, by such agents.

"I think all the English, and most of the American authorities, can be put on this footing; although it must be admitted, that some few of the latter appear to have been decided without adverting to the distinction that

exists between the efficacy of acts done by the *special* agents, and those done by the *general* agents of a corporation; and between the operation of an agency, the extent of which depends on facts known only to the corporate body and its servants, and that of an agency *whose scope is marked out by circumstances which are publicly known.*

"In the present case, the plaintiff is chargeable with knowledge of the fact that the commissioners had no lawful authority to put these bonds in the market, unless by force of a vote of the requisite number of land owners, and with knowledge as to the existence or non-existence of such consent."

Whatever may have been the law elsewhere these decisions were the settled law of New Jersey in regard to obligations of this character before Dana bought his bonds. They have never since been overruled or ever questioned in New Jersey.

In *Douglass* vs. *County of Pike*, 101 U. S., p. 687, Ch. J. WAITE says:

"After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself." * * *

"So far as the case is concerned, we have no hesitation in saying that the rights of the parties are to be determined according to the law as it was judicially construed to be when the bonds in question were put on the market as commercial paper."

If, then, a purchaser, with the law thus declared, chooses to speculate ~~on~~ in obligations of that character, relying upon a certificate false upon its face, to use the language of Ch. J. BEASLEY above quoted, the "embarrassment of his position is attributable to his own carelessness; and if a loss is to be incurred, it is more just that it should fall upon him rather than on the public who is in no default."

Thomas N. McCarter,
John L. Blake,
Wm. M Evarts.
} Counsel for Plaintiffs in Error

OFFICE SUPREME COURT U.S.
FILED
DEC 9 1882
JAMES H. McKENNEY, Clerk.

NAAR, DAY & NAAR, Printers and Stationers, Trenton, N. J.

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v.

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BRIEF FOR DEFENDANT.

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Statement.

On *April 25, 1873*, the president of the Montclair Railway Company brought to the office of E. D. Morgan & Co., in New York city, a promissory note for the sum of $50,000, made by the Montclair Railway Company to the order of and indorsed by the New York and Oswego Midland Railway Company, dated April 25, 1873, and payable four months after date,

and upon its face pledging as collateral security for the payment of said note, the 64 bonds of $1000 each, of the township of Montclair in question in this suit, with power to sell the same at public or private sale, without notice, upon non-payment of the note at its maturity; and also brought, at the same time, the said bonds and the annexed coupons, and requested E. D. Morgan & Co., to discount the note, upon the pledge of said bonds and coupons. E. D. Morgan & Co. discounted the note, and it, with the bonds and coupons, aforesaid, were then delivered to them. The note was not paid at maturity, and E. D. Morgan & Co., on *September 17, 1873*, caused the bonds and coupons aforesaid to be sold at public auction, by A. H. Muller & Son, auctioneers, in New York city, and at such sale Dana, the plaintiff, bought the said bonds and coupons, paying therefor the sum of $36,030, and said bonds and coupons were delivered to him.

Each of said bonds is signed and sealed by the commissioners of the township of Montclair, and recites on its face that it is issued "*in pursuance of an act of the legislature of the State of New Jersey, approved April 9, 1868, entitled 'An act to authorize certain townships, towns and cities to issue bonds and to take the bonds of the Montclair Railway Company;'*" and each of them bears on its face the following certificate of the clerk of the county of Essex, wherein said township of Montclair is situate, "*Registered in the county clerk's office,*

H. T. Dusenbury, clerk of Essex county," and each of said bonds was in fact registered is said clerk's office.

The township of Montclair was created by an act approved *April 15, 1868,* and lies along the authorized and actual route of the railway of the Montclair Railway Company, and the railway has been actually constructed through the said township.

Neither E. D. Morgan & Co. nor the plaintiff had any knowledge or notice of any fraud or irregularity in the issuing of these bonds.

BRIEF FOR DEFENDANT.

1. Was the township of Montclair one of the townships authorized by the act of April 9, 1868? (*Record, pages 100–104.*)

By the terms of section 1 of this act, the townships along the routes, or at the termini of the Montclair Railway Company, were authorized to issue bonds and take the bonds of said company, "*except the township of Bloomfield in the County of Essex, which township is hereby excepted from the operation of all the provisions of this act.*" The township of Montclair was created a body politic and corporate by the act of April 15, 1868, (*Record, pages 97–100*), and, as appears from section 1 of that act, the territory comprised within

its bounds formed part of the township of Bloomfield, at the date of the bonding act of April 9, 1868. The plaintiff in error, under the *thirty-second and thirty-fifth Exceptions*, (*Record, page 217*), insists, that, as the territory and inhabitants of Montclair formed part of the territory and inhabitants of Bloomfield on April 9, 1868, and as Bloomfield was excepted from the provisions of the act, it results that *a permanent territorial* and *personal disability* was imposed upon the territory and persons of the township of Bloomfield, and, therefore, upon the persons and territory now comprised in the township of Montclair, which was not removed by the subsequent cutting off of such territory and persons from Bloomfield, and the endowing them with an independent corporate existence and powers.

a. We submit, that the exception in section 1 of the act of April 9, 1868, is not a *dis*abling statute; it was simply *non*-enabling; it leaves the township of Bloomfield in statu quo; the additional powers granted to other townships are not granted to it; it is in no sense disabled, for it never was enabled; nor is there anything in the words of the exception, or in the context, to indicate a legislative intent to impose any continuing *disability* upon the corporate body, and much less upon the persons and territory comprised within its then corporate limits.

b. The subject matter of the bonding act was the grant of additional *corporate* powers to the political

corporations, *i. e.*, the corporate powers to issue bonds and impose taxes for their payment; the provisions as to the application for commissioners, consents of landowners, &c., were not of the essence of the grant of *power*, but mere provisions for ascertaining whether such grant were *accepted* by the corporate body and for its execution, if accepted. The intent of the exception in section 1 of the bonding act was *to withhold* the grant of the *corporate* power *to bond* and *to tax*, not *to impose* any *disability* upon lands or persons.

c. Even if it be admitted that *a personal* disability was imposed upon the freeholders of the township of Bloomfield, that disability was imposed on them *only so long as residents* of that township. Surely it cannot be pretended that, if a freeholder, then resident in Bloomfield, removed into another township along the routes of the railway, and there became a freeholder, the alleged disability would follow him. Or, that, if both he and his freehold were thus *physically* removed and both residence and locality actually changed, both person and land would continue disabled. Yet it is submitted that the act of April 15, 1868, as effectually removed both person and land from the township of Bloomfield into the township of Montclair as if there had been a physical removal into a township existing at the passage of the act.

d. And, as it is a settled canon of statutory construction that *every part* of a statute must be viewed in

connection with the whole, so as to make all its parts harmonize, if practicable, and give a sensible and intelligent effect to each, and as it is not to be presumed that the legislature intended any part of the statute to be without meaning, (*Potter's Dwarris, 144–5; Sedgwick Stat. Construction, second edition 200, and note "a"*) the exception in question must be read in connection with section 14 of the bonding act. (*Record, page 104*). If such connection be actually made, the substance of the grant of power will be as follows: "(Section 1). That on the application in writing of twelve or more freeholders residents of *any* township, town or city along the routes of the Montclair Railway Company, or at the termini thereof, (except the township of Bloomfield in the county of Essex, which township is hereby excepted from the operation of all the provisions of this act), it shall be the duty of the judge," &c., &c. (Section 2). "That it shall be lawful for said commissioners to borrow, on the faith and credit of their respective townships, towns or cities, such sums of money not exceeding twenty per centum of the valuation of the real estate and landed property of such township, town or city, to be ascertained by the assessment rolls thereof, respectively, for the year eighteen hundred and sixty-seven," &c., &c. (Section 14). "That in case *any new* township, town or city shall have been *created*, or the boundaries of any township, town or city shall have been enlarged *on the routes* of

said railway, or at the termini thereof, so that there is no assessment roll for the year eighteen hundred and sixty-seven for such township, town or city so created or enlarged, the said commissioners for *such new* or enlarged township, town or city, shall cause to be prepared an assessment roll *for the purposes of this act*, by extracting from *any* assessment roll or rolls of *persons or property in the territory embraced in the said new township*, town, or city so created or in said enlargement."

Can there be any doubt that the legislature intended that any *then existing* township along the routes of the railway, except the township of Bloomfield, or *any new township created* along such routes, should be within the purview and be vested with the powers of the act? By what rule of construction can the plain words of the fourteenth section, "*any new township* created on the routes of said railway," be transformed into any new township created on the routes of said railway *not containing within its territorial limits lands or persons now within the township of Bloomfield?* Would such a construction be *harmonizing* these parts of the statute? Does it not result in an arbitrary interpolation of words in the fourteenth section which contradicts its plain and unambiguous enactments?

e. If the result of the construction put upon the exception in section 1 by the plaintiff in error be to create such a contradiction of the plain enactments of

section 14, as that the two are irreconcilable, we submit that it is not section 14 that must give way. That section, being the latest expression of the legislative will, repeals the exception, even if it were construed to affect after-created townships.

Sedgwick Stat. Construction, 2d Ed., 100 and note.

f. If, after weighing the foregoing considerations, the court still hesitates as to the effect of the exception in section 1 upon the powers of Montclair under the act of April 9, 1868, it is submitted that an inspection of section 3 of the act of April 15, 1868, will remove all doubt upon that subject. (*Record, page 98.*) That section is a contemporaneous legislative construction of the exception in question, declaring the intent of the legislature to have been not to affect the new township by that exception; and such legislative construction is entitled to a controlling weight in any case of doubt. This weight is increased by the further legislative construction expressed in the act of March 27, 1874, (*Record, page 104,*) which clearly recognizes the township of Montclair as one of the townships authorized by the act of April 9, 1868, to issue bonds in aid of the railway company.

Pompton v. Cooper Union, 101 U. S. 202.

g. But the act of April 15, 1868, is not merely effectual as a legislative *construction* of the exception in section 1 of the act of April 9, 1868; it is a specific *enactment* that the former act *shall apply to and be in*

force in the township of Montclair, the same as if the township of Bloomfield had not been excepted therefrom. If, by the force of the exception, Montclair was excluded from the purview of the act of April 9, 1868, then by a well settled canon of construction the later act of April 15, 1868, repealed the exception *pro tanto.*

Sedgwick Stat. Construct., 2d Ed., page 100, and note.

h. The operation of the act of April 15, 1868, is so conclusive upon the subject of the power of Montclair to issue the bonds in question, that the plaintiff in error has felt compelled to take the position that the act is in conflict with the constitution of the State of New Jersey. (*Exception 34, Record, page 217*).

Waiving the objection that the exception is defective from its failure to specify what provisions of the State constitution are alleged to be violated by said act, I shall consider the legal position assumed by my learned friend in the court below, to wit: that the act of April 15, 1868, violates article 4, section 7, subdivision 4, of the State constitution, in that it embraces more than one object, and that the object is not expressed in its title.

The decisions of the State courts are controlling as to the construction of the State constitution, and they have repeatedly construed this subdivision. It is settled that the unity of the "object" is to be sought *in*

the end which the legislature purposes to accomplish, and not in the details provided to reach that end, and that the degree of particularity which must be used in the title of an act rests in legislative discretion. It is sufficient if the object of the act can be connected by fair intendment with the title.

State v. Union, 33 N. J. (4 Vr.), 350:
State v. Newark, 34 N. J. (5 Vr.), 236.

The object of the act is declared in the title to be "to incorporate the township of Montclair," and it is not only a pertinent, but a necessary, part of the incorporation of a municipal corporation, that the sovereign should vest it with appropriate powers; and the subdivision in question has vested the corporation with all the powers possessed by the other townships of the same county, and particularly with all the powers conferred by *any* act from the operation of which the township of Bloomfield had been excepted by *any* provision or exception. Such grant of power was germane to the object to the act—it was for public purposes and for public benefit, and was as effective and constitutional as any other part of sections 2 and 3 of the charter of Montclair. Either that town was clothed with the powers of the bonding act, or it had *no* corporate powers; for none are conferred save by these sections, and *all* the powers so granted are obnoxious to the criticism sought to be made upon this particular power. We submit that the only legal inquiry

is, Is this a corporate power? If it is, it is a part of the one object expressed in the title, which is to create a body politic with corporate powers. The act of April 9, 1868, by its own terms became operative upon the new township of Montclair at the instant of its creation, and its operation was confirmed by the express enactment of section 3 of the act of April 15, 1868.

i. A further constitutional objection is raised by the *thirty-fourth exception* (*Record, page 217*), to wit, that the vesting of the power to appoint commissioners in a judge of the circuit court is an exercise of the executive power by a member of the judiciary, and violative of article 3 of the State constitution.

We submit that such appointment was the exercise of a power *properly* belonging to the judiciary department.

1. It was an appointment *provided for by law*, and, therefore, not an appointment within the constitutional functions of the Executive. (*Art. 7, sec. 2, subdiv. 9 State Const.*)

2. The commissioners are clothed with important *judicial* powers of ascertaining and determining conclusively precedent facts and the legality of precedent acts, and are, *pro tanto*, an inferior court, which the legislature may ordain and establish by law. (*Const. art. 6, sec. 1.*) And there was no more *impropriety* in the appointment of *this* tribunal by the judge than in

the innumerable appointments of clerks, masters, commissioners, referees, et id omne genus, vested by ancient and continuing statutes in the courts of every State, as well as in the Federal courts. Universality is the potential test of propriety.

3. Although the distribution of powers among the executive, legislative and judicial departments is common to the constitutions of the several States, yet it has been the well nigh universal practice to vest in judicial tribunals, such as county courts, &c., either *the direct exercise* of the functions conferred in this case on these commissioners, or the power of appointing such officers. The cases reviewed in this court and the State courts are full of such instances; yet in no case, either in a State or Federal court, has it been intimated that there was a constitutional defect in the grant or exercise of such powers. Is not this *universal contemporaneous exposition* conclusive?

4. The vesting of the appointment of commissioners in courts and judges, in the course of the exercise of the power of *eminent domain*, has been common in all of the States. In New Jersey the courts of common pleas were vested with such powers as early as November 29, 1788, by an act still in force. (*Rev. of 1877, page 642.*); and from December 31, 1824, (*Pamp. Laws of 1824, page 158,*) down to the adoption of the constitutional amendments of 1875, (which prohibited the creation of corporations by special acts), hundreds

of railway, canal, turnpike, and municipal corporations have been empowered by continuous annual legislation to acquire lands through the action and adjudication of commissioners appointed by courts and judges; and since 1875, under the general railroad law still in force, (*Rev. of 1877, page 925,*) scores of railroad companies have acquired lands in like manner. Indeed, it may be averred without fear of contradiction that the title to all the land which the railroad, canal and turnpike corporations in the State of New Jersey have acquired by the exercise of eminent domain, has been vested by and rests upon the action and adjudication of commissioners appointed by courts and judges clothed with the power of such appointment by legislative acts. It is therefore submitted that this continuous action by the legislature, by the courts and judges, by corporations and land owners, prior to, and for nearly forty years since, the adoption of the article of the constitution in question, is a conclusive exposition of the universal construction of that article. The exercise of the power in question has been held to be the exercise of the judicial power; perhaps, rather falls among the mass of mixed powers which do not belong *exclusively* to any of the co-ordinate branches of the government in the constitutional sense, but may be exercised by either, as provided by the statute authorizing such exercise.

Walker v. Cincinnati, 21 Ohio State, 48–51;
Sweet v. Hulburt, 51 Barb., 315.

It is clear that the township of Montclair was authorized by the act of March 9, 1868, to issue the bonds in question in this cause.

Was the railroad of the Montclair Railway Company in aid of which the bonds were issued, the object contemplated by the bonding act.

The plaintiff in error by its *thirty-fifth exception*, seeks to maintain that, inasmuch as the Montclair Railway Company was authorized by its supplement of March 16, 1869, to extend its railway, and did extend it beyond its original terminus, such extension made it a different enterprise from that contemplated by the bonding act, and the power to aid the railway company was extinguished.

1. I answer, that the point was raised in another case, in which the effect of the supplement to the charter of the Railway Company authorizing the extension of the railway, and its extension, upon the bonding act, was considered, and it was adjudged that the legislature intended by section 4 of the supplement to the railway act to authorize aid to be given to the construction of the railway as authorized to be extended by the supplement.

Pompton v. Cooper Union, 101 U. S., 196, 201.

2. Inasmuch, then, as the power vested to aid the extended road, and as the aid bonds were issued in *March*,

1870, a year after the passage of the supplement, the defendant cannot pretend that the enterprise has been changed, in anywise, *since* it issued its bonds in aid thereof.

3. Montclair was a township through which the railway was originally *authorized* to be constructed, and it is distinctly proved to be a township through which the railway has *actually been constructed*; (*Record, page 126*), hence it is along the route; and that location is *the test of its power*, without reference to future extensions of the railway by legislative authority.

4. And as all the parties to the enterprise embarked in it with full knowledge that the legislature had, by the general corporation act, (*Nixon's Digest, page 169, sec. 6*), reserved the power to amend the charter of the railway company, at discretion; and as it cannot be pretended that the amendment of March 16, 1869 *materially* changed the enterprise, or in anywise *injured* the township, such amendment would not have invalidated the bonds, even if they had heen issued *before* the passage of such amendment.

Pierce American R. R. Law, 93–99.

Were the persons who executed the bonds of Montclair upon which the suit was brought sufficiently proved to have been commissioners of that township?

The *second and third* exceptions, (*Record, page 213*) are the only exceptions which can relate to this subject.

We submit, as to the second exception, that we had shown the most exemplary diligence in instituting search for the petition and appointment of commissioners in this case under the provisions of section 1 of the bonding act. It will be observed that no provision is made by the act respecting the custody, preservation, or recording of these important papers; the legal inference would be that they remained in the custody of the commissioners, who were officers of the township, or in that of the township; or by the negligence of the town and its officers, they might be found in the custody of Spaulding, to whom Mr. Keasby says he may have given them, (*Record, page 140*), or possibly in the custody of the railway company, or of the counsel who made the application, or of the judge. We procured an order of the court requiring the township to produce these papers, and demanded their production, and counsel answered that they had searched and could not find them, (*Record, pages 123–4*); we called the commissioner having the custody of the commissioners' papers (*Record, pages 144–146*), and he could not produce them, saying he had never seen *the petition*, but had seen *the order* appointing the commissioners in the hands of his deceased co-commissioner "Hening;" we proved the absence of Henry C. Spaulding from the United States, (to whom Mr. Keasby thought he

might have given these papers), and search among his papers by his son, (*Record, page 128*); we called the presidents of the railway company, the receivers of that corporation, the secretary of the railway corporation, its successor, (*Record, 124–127*); we called both the counsel and the judge of the Circuit Court, (*Record, 128–140*); all were under subpœna duces tecum to produce these papers, and all testified to inability to find or produce them. It is to be observed, that the papers were not *ours*, that *we* had not lost them, that in presumption of law they were in the custody of the township, and if lost or destroyed, *it was by the negligence or fraud of its officers.*

Even if we had been bound to prove a *regular appointment* of these officers under section 1 of the act of April 9, 1868, we had done enough to enable us to produce secondary evidence of the contents of these papers. That evidence was admitted and it established, *prima facie*, the regularity of their appointment. But we were not bound to prove *the regularity* of their appointment. All that was incumbent on us, was to prove that these officers were *de facto* officers acting *under color of title.*

1. It is clear that the commissioners were *public* officers; they were charged with the duties relating to the public of their own township on the one hand, and to the *general public* on the other, among whom these bonds and coupons were to be circulated from hand to

hand, and to be dealt in upon the public exchanges. Their various duties *directly concerned the public*, and this is the test of the public character of their offices.

So it has been held that an attorney at law is a public officer, and a great variety of inferior quasi public agents have been held to be within the definition of *public officers*.

2 Best's Evidence, sections 356–358 ;

(Atty. at law.) *Seymour v. Ellison, 2 Cowen, 29 ;*

(Atty. at law.) *S. P. Wood's case, note to 2 Cowen, 29 ;*

(Collector appointed by trustees.) *People v. Bedell, 2 Hill, 196 ;*

(Trustees under local act.) *Regina v. Murphy, 8 C. & P., 297 ;*

(Watchman under local act.) *Butler v. Ford, 1 Cr. & M., 662 ;*

(Vestry clerk under local act.) *McGahey v. Alston, 2 M. & W., 206 ;*

(Churchwardens.) *Doe v. Barnes, 8 Ad. & E. (N. S.), 1037 ;*

(Attested soldier.) *Wolton v. Gavin, 16 Ad. & E. (N. S.), 48 ;*

(Turnpike superintendent.) *Callison v. Hedrick, 15 Gratt., 244 ;*

1 Dillon Mun. Corp. (3d Ed.), section 237 and note 1.

There can be no doubt that *these* commissioners,

charged with duties of such importance to both the town and the public, were both *municipal* and *public* officers.

2. The authorities above cited also amply support the rule that proof that a person *has acted* in the capacity of a public officer is *prima facie* evidence of his having been duly appointed. The fact that the three persons who executed the bonds upon which this suit was brought *had acted as commissioners* of the township of Montclair was positive and uncontradicted. (*Record 144–5.*) And the fact that they had so acted was further proved by a witness called by the township itself. (*Record 192.*) Undoubtedly the plaintiff below might have rested upon this evidence as *prima facie* establishing the appointment of these commissioners, leaving the township to disprove the fact of appointment, but for the following consideration:

3. The plaintiff below might reasonably apprehend that the township *might* be able, at a later stage in the trial, to show that *no petition* had been in fact presented, or to produce the petition presented to the circuit judge, and to show that *on its face* it did not comply with the requirements of section 1 of the bonding act, or by evidence *in pais* to show such non-compliance, *i. e.*, that the petitioners were not in fact residents of Montclair. The result would be to demonstrate that the commissioners did not hold their office *de jure*, and, if no *color of title* had been shown by the

plaintiff, it would also result that the commissioners would not have been *such* commissioners *de facto*, as that *their official acts were valid and unimpeachable* so far as plaintiff, a bona fide holder without notice, was concerned. It is certainly the law of New Jersey, and there are weighty authorities in other States to the same effect, that to constitute a person an officer *de facto* (as distinguished from a *mere usurper* on the one hand, and an officer *de jure* on the other), and one the validity of whose acts as to third persons, without notice, cannot be impeached, it must be shown that the incumbent held the office *with color of title*. It was therefore necessary for the plaintiff below to show that *some* application was made to the circuit judge (whether regular or not was unimportant), that *some* order was made by the judge, that the persons who were acting as commissioners claimed title under that order, and that they gave an official bond approved by the judge. (*Record, 132, 135.*)

State v. Tolan, 33 N. J., (4 Vr.,) 201;
Plymouth v. Paynter, 17 Conn., 585;
Hooper v. Goodwin, 48 Me., 79;

Color of title being, therefore, shown in plaintiffs' opening case, all testimony of the township, in rebuttal, of lack of title *de jure*, would be immaterial and incompetent.

It is submitted that the evidence is ample to prove that these commissioners were officers *de facto*, openly

acting under claim and color of title, and that their acts are valid as to the plaintiff.

It is also submitted that there is not an iota of evidence, nor even *an offer* on the part of the township, to impeach the *de jure* title of the commissioners.

It is also submitted that the act of March 27, 1874, (*Record, page 104,*) is a legislative recognition that there were then actually existing commissioners of Montclair, and an enactment that the duties theretofore imposed on them by the bonding act should thereafter be performed by the township committee. And the evidence is uncontradicted that no other persons than the commissioners who executed the bonds and coupons sued upon, ever acted as such commissioners. (*Record p. 147.*)

Is the defendant in error a bona fide holder for value, without notice, of the bonds in suit?

1. The defendant acquired the bonds by purchasing them at an auction sale by A. H. Muller & Son, auctioneers, in New York city. He actually paid therefor the sum of $36,030. (*Record, 110, 114, 117, 180.*) His testimony is explicit that he had no knowledge or notice of any fraud, illegality or irregularity in the issue of the bonds. (Record, 110.)

2. The bonds were sold by order of E. D. Morgan & Co., bankers in New York city, who acquired them as

follows: a note for $50,000, dated April 25, 1873, made by the Montclair Railway Company to the order of and *endorsed by* the Oswego and New York Midland Railway Company, payable four months after date, and expressing on its face a pledge of the bonds now in suit as collateral security, with authority to sell the same at public or private sale, upon non-payment of said note, together with the bonds so pledged, were brought by Julius H. Pratt, president of the Montclair Company to and the note was discounted by E. D. Morgan & Co., at a discount of 2½ per cent. from the face of the note, and the note and the bonds then delivered to E. D. Morgan & Co. by Pratt, (*Record, 107, 125*). At the time they received these bonds E. D. Morgan & Co. had no knowledge or notice of any fraud or illegality in the issue of the bonds, (*Record, 106*). Upon the maturity and non-payment of the note, E. D. Morgan & Co., sold the bonds at public auction by Muller & Co., and the plaintiff bought them.

3. The plaintiff in error, by his *forty-second* and *forty-third* exceptions, (*Record, 218*), insists that, as the bonds in suit were originally pledged by the Montclair Company to the Oswego Company, there is no evidence that the legal title of said pledgee passed to E. D. Morgan & Co., and from them to the plaintiff below.

a. To this I answer, that the indorsement of the note by the Oswego and Midland Railway Co. transferred

the *legal* title to *the note* to E. D. Morgan & Co., and also transferred to them *the equitable title to these bonds* pledged as collateral security for the payment of the note.

Daniel's Negot. Instruments, section 748.

b. That as the bonds and coupons are on their face payable *to bearer*, the delivery of them by Pratt to E. D. Morgan & Co. also vested in them *the legal title* to said bonds and coupons.

c. Pratt, being *in possession* of the note indorsed in blank, and of the bonds title to which would pass by delivery, had full power to and by his delivery did vest a good title in E. D. Morgan & Co., as against the indorser and prior pledgee *even if he had stolen* both the note and the bonds, inasmuch as there is no scintilla of evidence of *mala fides* on their part.

Murray v. Lardner, 2 Wall. 110.

d. Nor did the usurious interest taken by E. D. Morgan & Co., on the discount of the note, at all impair its validity or affect their legal title to the note and bonds. At common law, usury does not invalidate the contract of loan. No statute of New York, (wherein the transaction took place), which invalidates a usurious loan, was offered in evidence; and, in fact, both the statute of that state and the statute of New Jersey prohibit a corporation from setting up the defence of

usury. (*Pamp. Laws of New York, 1850, page 334; Pamp. Laws of N. J., 1855, p. 500.*)

e. It is submitted that not only is the plaintiff below a bona fide holder, by virtue of the transmission to him of the title of E. D. Morgan & Co., who were also bona fide holders, but that even if they were not bona fide holders, yet that the plaintiff below having purchased the bonds *at public auction* and paid for them $36,030, and the bonds, payable to bearer, having been *delivered* to him as such purchaser, he thereby became a bona fide holder for value; and there is no scintilla of evidence that he had any notice of infirmity in the title of E. D. Morgan & Co., if there had been such infirmity.

Were the bonds sealed, in contemplation of law?

The plaintiff in error, by his *thirty-seventh* and *forty-first* exceptions, (*Record, 218,*) raises a question as to the validity of the *scroll* seals attached to the bonds in suit, each subjoined to the signature of a commissioner. The execution of the bonds is proved by one of the commissioners. (*Record, 147.*)

The statute of New Jersey of November 1, 1797, enacts that any instrument for the payment of money to which the person making the same shall affix a scroll, or ink or other device by way of seal, shall be

of the same force as if actually sealed with wax. (*Nixon's Digest, 1868.*)

And the Supreme Court of the State has adjudged that there need be no other proof that the scroll was intended for a seal than that the instrument itself contains the statement "witness my hand and seal."

Force v. Craig, 2. Hal., 272.

As the proof was uncontradicted that the commissioners *signed* the bonds, as each signature is set opposite a scroll, and as each instrument declares that the commissioners have thereto set their hands and seal, the jury *could not* be warranted in finding that the bonds were not sealed, and the trial judge would not have been warranted in submitting the question to them.

Commissioners v. Clark, 94 U. S. 284.

The recitals of the bonds are conclusive as to bona fide holders.

a. The *seventh* and *thirty-first* exceptions raise the question so often debated and decided in this court, of the right of a municipal corporation to go behind the adjudication of the proper officers that the statutory requirements have been complied with, such adjudication being manifested by the recitals of the bonds. If *any* legal position is to be considered fixed and determined by this court, it is that a municipal corporation cannot contradict the adjudicatory recitals of bonds in

the hands of bona fide holders, where the commissioners are the only tribunal designated to adjudge the facts. And as the recitals of bonds identical with the recitals of the bonds in suit, and issued under the same statute, have been deliberately adjudged by this court to be conclusive adjudications, I deem it superfluous to discuss the point, or to encumber the court with further citations.

Pompton v. Cooper Union, 101 U. S., 204.

As *the forms* of the statute were actually complied with, and consents of land-owners were obtained, and proofs of such consents were actually made, and as the commissioners both *formally* adjudged them to be sufficient (as appears by exceptions *seventeen* and *eighteen*, *Record*, *215*, and by the minutes of the commissioners, *Record 170*, *174–5*), and publicly renewed their adjudication in the recitals of the bonds, the town cannot go behind the adjudicatory recitals, and prove that the recitals were false or fraudulent as against a bona fide holder;

b. And a fortiori, *in this case*, where the statute prescribes that "*the fact* that the persons signing such consent own or represent as aforesaid (*i. e., as agent or president*) at least two-thirds of the taxable real and landed property of such township, town or city, shall be *proved* by the affidavit of the assessor," &c., (*Record*, *101*, *section 2*,) and the assessor has accordingly endorsed on each consent his affidavit "that the owners

or representatives of at least two-thirds of the taxable real and landed property of said township have signed the consent to issue bonds under and by authority of the act," being the bonding act in question. (*Record, 153.*)

The plaintiff in error objects that these affidavits do not comply with the act because they do not contain the words "borne on the last assessment roll thereof at the valuation thereon appearing." To which I answer,

1. The commissioners have *adjudged* performance of all precedent requirements, and the qualifications of the consentors.

2. The proof was made to the commissioners, and they have *adjudged* the sufficiency of the proof.

3. The affidavit is in *the literal words* of that part of the section prescribing the affidavit.

4. The affidavit purports to be made under the act, and to be by its authority, and being the *statutory proof* by the specified town officer is conclusive as to a bona fide holder.

Town of Venice v. Murdock, 92 U. S., 498;
Rock Creek v. Strong, 96 U. S., 278.

c. The plaintiff in error, by his *third* and *sixth* exceptions, (*Record, 213*), assails the validity of the consents of the landowners to the issue of the bonds, for the reason that they consent that the bonds "shall *be exchanged for*, or their proceeds invested in the income

bonds of the said Montclair Railway Company," and insists that the act does not authorize such exchange.

This court has repeatedly decided, that such exchange is a good execution of a power granted to a municipal corporation to borrow on its bonds and invest the proceeds of its bonds in the bonds or stock of a railway company.

Meyer v. Muscatine, 1 Wall., 392;
Rogers v. Burlington, 3 Wall, 666–7;
Queensbury v. Culver, 19 Wall, 93.

And as there is no statutory restriction of the power of the railway company to issue bonds, and no statutory prescription as to *what bonds* of the railway company should be taken by the town, the power was complete to take *income* bonds.

d. By his *twenty-fifth* and *thirty-first* exceptions, the plaintiff in error seeks to invalidate the bonds by showing that an injunction issued from the New Jersey Chancery Court, prohibiting the issue of these bonds, was served on the commissioners on *March 19, 1870.* (*Record, p. 202.*) But the record offered also showed that the bill was dismissed and the temporary injunction was dissolved *May 20, 1873.* (*Record, 202–3.*) And that record showed that the bonds were issued *March 18, 1870,* and as the plaintiff below acquired title to these bonds on *September 17, 1873,* long after the dissolution of the injunction, and as the injunction was not served until after the bonds had been actually issued,

the bonds having been actually issued on the *seventeenth and eighteenth* of March, 1870, (*Record, 149*), it is submitted that there was no lack of power to issue pro ut bona fide holders, at the date of such issue, and that the subsequent dismissal of the bill was, in effect, a judicial determination that the power to issue these bonds existed and was lawfully exercised at the filing of the bill, and that the injunction ought not to have issued. If the record was admissible at all in this suit, the town cannot avail itself of it without being bound by it. The plaintiff in that suit submitted to the answer and abandoned his proceeding, and actually consented to its entire dismissal; *he* and his associates could not *now* be heard as against bona fide holders, to allege a fraud or want of power, which, having had their day in court, they refrained from investigating, and deliberately agreed of record to abandon. Nor can the town occupy any better position. There could be no better means devised to entrap the public than the course thus taken, in solemnly abandoning the charges of fraud and want of power. Every act and fact *now* attempted to be set up against an innocent holder, was *then* within the actual knowledge, or the easy reach, of the complainant in the equity suit, and his associates, and yet they deliberately refused to join issue and prove the facts, or otherwise speed their cause, although expressly ordered so to do by the equity court. (*Record, p. 203.*) The record, so far from tending to support

the charge of want of power to issue the bonds, was an indorsement of such power, and was clearly immaterial in this cause.

e. Nor could it avail, as against a bona fide holder, that the town officers expedited the issue of the bonds under the apprehension that such issue might be restrained by injunction. Such expedition cannot affect the question of the *existence of the power* to issue pro ut bona fide holders—and a fortiori, when the proceeding for such injunction was afterward dismissed by consent of the movers. If at the time of the issuing of the bonds the commissioners had not been served with the injunction, their power to issue remained intact.

f. As to the *forty-fourth* and *forty-seventh* exceptions, and to any other exception which is based upon the refusal of the court below to admit evidence that there had been *fraud committed* by the officers of the town, or by antecedent holders of the bonds, or is based upon the ruling of the court below that no fraud had been shown, we answer that, as the plaintiff below was a bona fide purchaser of the bonds, no such fraud was a defence against him. All evidence thereof was illegal and objected to. Whether the evidence was sufficient or insufficient to establish such fraud was wholly immaterial.

1 Dillon Mun. Corporations, s. 513, (3d Ed.)

Were the bonds lawfully registered?

By his *thirty-eighth* and *forty-sixth* exceptions the plaintiff in error assails the validity of the registry of the bonds.

a. It was a part of the *res gestae* of the sale or exchange of the bonds that the commissioners should send them by their messenger to the county clerk's office and have them registered there. The bonds were delivered and accepted with the understanding that the messenger of the commissioners should present them for such registry. The purchase or exchange of the bonds was upon the condition that the messenger of the commissioners, and acting for them, should have them registered. It is submitted that the registry was the act of the commissioners. (*Record, 151–2.*)

b. But it is also submitted that, as against a bona fide holder, the certificate of the county clerk printed and written across the face of each bond in the precise words of section 12 of the bonding act, (*Record, 103,*) was conclusive upon the town, even if the bonds had never been actually registered. And this court has so decided.

Rock Creek v. Strong, 96 U. S., 278.

It is manifest that the legislature intended the certificate of the county clerk to be *the evidence* accompanying each bond, to assure every taker of these negotiable instruments that the requirements of the section

had been complied with. For this purpose the clerk was the authorized agent of the town to make this adjudication of fact, and to represent it to the public.

c. And if it be admitted that such certificate would not be conclusive if the bonds *were not in fact registered*, yet in this case, as the bonds *were in fact registered*, (*Record, 140–142,*) we submit that the only statutory requirements in respect to the registry of the bonds were complied with. The bonds were certified to be registered, and were in fact registered, which was all that the section required to make them valid.

d. Nor will this court import into this section by judicial construction any other condition precedent to the validity of these bonds than those *specifically* expressed by the legislature. It is not an express condition that the registry shall *precede* the issue, as was the positive prescription of the Missouri statute considered in *Anthony v. Jasper County, 101 U. S., 1879. There* the statute *expressly* declared that the bonds should not be *issued*, nor be *valid*, unless *first* registered by the State auditor. *Here*, the only requirement is that they shall be actually registered. We submit that the bonds having been actually registered, by the direction of the commissioners, it is immaterial whether such registry preceded or reasonably succeeded the issue of the bonds. The object of the requirement was merely to prevent an *over-issue* of bonds of the town, and there was in fact no over-issue. Even if there had been, the

certificate of the registering officer would have been conclusive in favor of a bona fide holder.

Marcy v. Oswego, 92 U. S., 639.

We respectfully submit that it would be a grave stretch of judicial power to nullify the certificate of the registering officer and the act of registry, by importing into the section a requirement as to *the time* of the registry, which was not imposed by the legislature.

e. And finally, we submit that the recitals on the face of the bond are conclusive in favor of a bona fide holder as to all questions of *time* as to either the subscription for, or issue, or registry of the bonds.

Concord v. Savings Bank, 92 U. S., 636–7.

Was it material in this case, that the jury should be instructed by the court, that the plaintiff could recover only the amount he had paid for the bonds, with interest?

The plaintiff in error, by his *forty-fifth* exception, insists that the plaintiff below was entitled to recover only so much as *he* had paid for the bonds, with interest, and that the judge should so have charged the jury.

a. The *principal* sum sued for and recovered by the plaintiff on these bonds and coupons, was $35,022.60. He had actually paid for them $36,030; the instruction asked for was, therefore, wholly immaterial. The plaintiff's right to a further recovery, and its extent, in any subsequent suit, was not a matter germane to

this suit, nor then a proper subject of judicial enquiry. The instruction would have been obiter dictum.

b. The instruction asked for would have been wholly erroneous. The plaintiff below stood in the shoes of E. D. Morgan & Co., bona fide holders, who had paid $50,000 for the bonds, and he was clearly entitled, in any event, to recover at least *that* sum, with interest.

The *fifth* exception of the plaintiff in error was to the parol testimony of one of the bankers of the plaintiff below as to the condition of his bank account at the date of the purchase by him of the bonds at the auction sale.

To this we answer:

1. That the question was not objected to when put, and that it was too late to object after the answer had been recorded.

2. That the evidence was immaterial, as it was abundantly proved by other testimony, not excepted to, that the plaintiff had in good faith bought and paid for the bonds. (*Record, 106, 110, 112, 117, 118.*) If the evidence had been excluded, the plaintiff was still entitled to recover.

As to the *thirty-sixth* exception, we answer:

1. That the agreement (*Record, 170, 172,*) does not delegate any duty imposed by law upon the commissioners; they *had discharged their statutory duties* by the sale of the bonds.

2. The commissioners, after the sale, very prudently

required of the railway company, and the railway company agreed, to deposit the bonds with the trust company and not to negotiate them to third parties until equal sums should have been expended in constructing the railway in the township, and the parties had mutually selected a tribunal to decide that fact.

3. If they had no power to require and to execute this agreement, the only effect would be to make *the prior delivery* to the railway company absolute and unconditional.

4. That the municipal corporation, and its officers, have the power to annex conditions, other than prescribed in the enabling act, to subscriptions for stock or the issue of bonds, is decided by eminent authority.

People v. Holden, 91 Ill., 450;

Vicksburg, &c., R. R., v. Ouachita, 11 La. Ann., 652;

Portland, &c., R. R., v. Hartford, 58 Me., 27;

Lawson v. Milwaukee, &c. R. R., 30 Wis., 603–4.

It would be a curiously illogical construction of municipal powers to hold that, the corporation having observed all the conditions prescribed by the statute, and having thus acquired the powers thereby granted, yet that its powers are annulled, and its action voided, by its annexing other conditions for its more complete protection, which are neither expressly or impliedly prohibited by the statute or contrary to public policy. Having *acquired* the power by observing the

statutory prerequisites, why may it not guard the *exercise* of the power, by adding such precautionary conditions as will secure the attainment of the object of the statute, *i. e.*, the *actual construction* of the railroad?

5. No power was *delegated* to the *three arbitrators;* they were mutually empowered *to determine the fact,* from time to time, of the amount which had been actually expended in the construction of the railway within the township. The *statute* did not impose upon *the commissioners* any duty whatever respecting the construction of the railroad—hence there was no delegation of any *statutory* duty, nor, indeed, of any *duty.*

The *first* and *last* exceptions are purely formal.

We have only further to call attention to the fact that the town is amply protected against the alleged frauds of the commissioners by the bond provided for in section 8 of the bonding act, (*Record, 103,*) and that it holds the bonds with sureties approved by the judge.

We submit that there is no material error, if any, shown by the record, and that the judgment below should be affirmed.

Barker Gummere,
Counsel for Defendant in Error.

Appendix.

BOND.

UNITED STATES OF AMERICA.

State of New Jersey. [Vignette.] Essex County.
No. 20. $1000.

Township of Montclair.

1000 DOLLARS. Registered in the County Clerk's Office. H. T. DUSENBRY, *Clerk of Essex County.*

In pursuance of an act of the Legislature of the State of New Jersey, approved April 9th, 1868, entitled "An Act to authorize certain townships, towns and cities to issue bonds and to take the bonds of The Montclair Railway Company."

Know all men by these presents, that "The Inhabitants of the TOWNSHIP OF MONTCLAIR, in the County of Essex," and State of New Jersey, hereby for value received acknowledge themselves indebted to Samuel Holmes or bearer in the sum of One Thousand Dollars, in lawful currency of the United States of America, which sum of money the said corporation promises to pay on the first

$1000

day of November, 1874, at the National State Bank of Newark, with interest thereon at the rate of seven per cent. per annum, payable on the first days of May and November in each and every year, on presentation and surrender of the annexed coupons as they severally become due, at the said National State Bank of Newark. Interest on this bond to cease at its maturity.

1000 DOLLARS.

In witness whereof, the Commissioners for the township of Montclair, appointed in pursuance of the provisions of said act, have hereunto set their hands and seal respectively to be hereunto affixed this 17th day of March, 1870.

[25 cts. U. S. Stamp. Cancelled. Montclair Comrs. March 17, 70.]

R. M. HENING, [L. S.]
JARED E. HARRISON, [L. S.]
H. B. LITTELL, [L. S.]

Commissioners for the Township of Montclair.

COUPONS ATTACHED TO BOND.

The Township of Montclair, in the County of Essex, and State of New Jersey, will pay the holder hereof, on [$35] the first day of Nov., 1874, THIRTY-FIVE DOLLARS on presentation at the National State Bank of Newark, being semi-annual interest on Bond No. 20. $35

R. M. HENING,
Chairman of the Commissioners.

The Township of Montclair, in the County of Essex, and State of New Jersey, will pay the holder hereof, on [$35] the first day of May, 1874, THIRTY-FIVE DOLLARS, on presentation at the National State Bank of Newark, being semi-annual interest on Bond No. 20. $35

R. M. HENING,
Chairman of the Commissioners.

The Township of Montclair, in the County of Essex, and State of New Jersey, will pay the holder hereof, on [$35] the first day of Nov., 1873, THIRTY-FIVE DOLLARS, on presentation at the National State Bank of Newark, being semi-annual interest on Bond No. 20. $35

R. M. HENING,
Chairman of the Commissioners.

The Township of Montclair, in the County of Essex, and State of New Jersey, will pay the holder hereof, on [$35] the first day of May, 1873, THIRTY-FIVE DOLLARS, on presentation at the National State Bank of Newark, being semi-annual interest on Bond No. 20. $35

R. M. HENING,
Chairman of the Commissioners.

[Endorsement on back.]

STATE OF NEW JERSEY,
ESSEX COUNTY.

TOWNSHIP OF MONTCLAIR.

BOND.

No. 20. $1000.

Interest payable May 1st and November 1st, at the National State Bank of Newark, New Jersey.

COPY OF NOTE.

$50,000. NEW YORK, April 25, 1873.

Four months after date The Montclair Railway Company promise to pay to The New York and Oswego Midland Railroad Co. or order, Fifty Thousand Dollars, for value received, having deposited with as collateral security, with authority to sell the same, at the Brokers' Board, or at public or private sale, at option, on the non-performance of this promise, and without notice, sixty-seven thousand dollars township bonds, viz.: Montclair, N. J., Nos. 20–32, 38–40, 110, 115, 129–132, 152–155, 160–197—64 of $1000 each—and Woodside, N. J., Nos. 48–50—3 of $1000 each.

THE MONTCLAIR RAILWAY COMPANY,
by J. H. Pratt, Pres't.

[Endorsement on back.]

New York and Oswego Midland Railroad Co.
By D. C. LITTLEJOHN,
President.

P. 1006
P. 2010
Pro. non-pay't.
Aug. 28, '73.
E. F. C., Jr.
N. P.

COPY OF NOTICE OF SALE.

NEW YORK, September 12th, 1873.

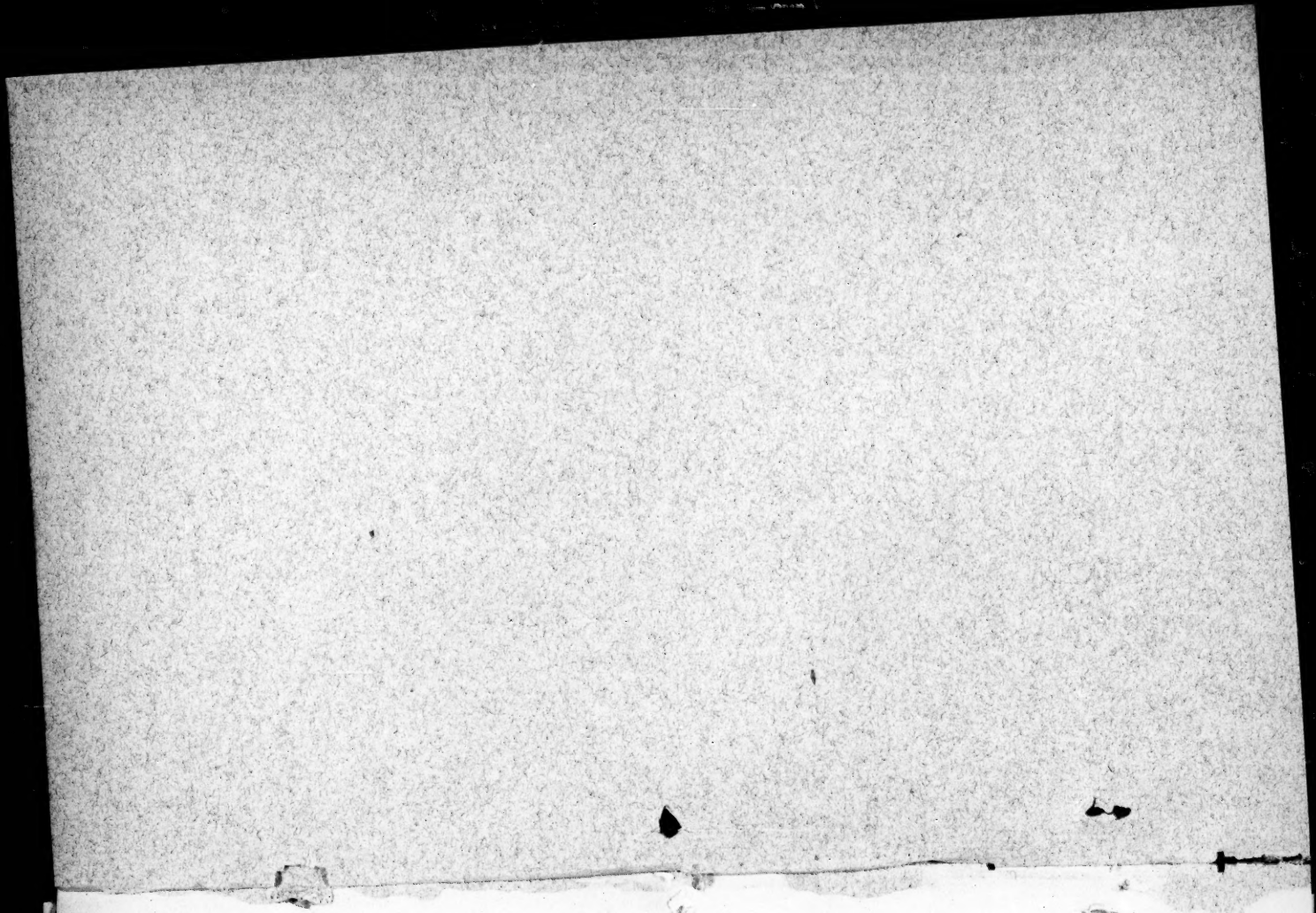
D. E. Culver, Esq., Pres't:

DEAR SIR—We intend to sell the $64,000 bonds of Montclair, N. J., township, and the $3000 bonds of Woodside township, (which we hold as coll'l security for the Montclair R. Road Co'y's note for $50,000, end'd by the N. Y. and Oswego Midland Rail Road Co'y, due Aug. 25–28, 1873,) on Wednesday next,

September 17th, through Mr. A. H. Muller, auct'r, at 111 Broadway, at 12½ o'clock, unless you advise us previously that you desire some other disposition made of them.

Very resp'y yours,
(Signed) E. D. MORGAN & CO.

A Receipt of the Town Clerk for Certain Papers.

Received of R. M. Hening a certified copy of the consent of certain land-owners in the township of Montclair, in the county of Essex, with the affidavits of the assessor of the township of Montclair appended, and the respective affidavits of R. M. Hening, Jared E. Harrison and H. B. Littell annexed thereto, as the same are now on file in the clerk's office of the county of Essex, in accordance with an act of the legislature of New Jersey, entitled "An act to authorize certain townships, towns and cities to issue bonds and to take the bonds of the Montclair Railway Company," approved April 9, 1868, said copy filed with me this 21st day of March, A. D. 1870.

CHAS. P. SANDFORD,
Township Clerk.